THE GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED

1994 CUMULATIVE SUPPLEMENT

Volume 18

Chapters 137 through 143B

Prepared under the Supervision of

The Department of Justice
of the State of North Carolina

BY

The Editorial Staff of the Publishers

Under the Direction of

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Annotated through 443 S.E.2d 468. For complete scope of annotations, see scope of volume page.

Place Behind Supplement Tab in Binder Volume. This Supersedes Previous Supplement, Which May Be Retained for Reference Purposes.

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Preface

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Amendments are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings.

Chapter analyses show all affected sections, except sections for which catchlines are carried for the purpose of notes only. An index to all statutes codified herein will appear in Replacement Index Volumes.

A majority of the Session Laws are made effective upon ratification, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 30 days after the adjournment of the session" in which passed.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute is cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P. O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Cumulative Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

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User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included in Volume 1. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See Volume 1 for the complete User's Guide.

Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 1993 (Reg. Sess., 1994) Session affecting Chapters 137 through 143B of the General Statutes.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports through Volume 336, p. 77.
North Carolina Court of Appeals Reports through Volume 114, p. 505.
South Eastern Reporter 2nd Series through Volume 443, p. 468.
Federal Reporter 3rd Series through Volume 21, p. 1127.
Federal Supplement through Volume 848, p. 212.
Federal Rules Decisions through Volume 154, p. 535.
Bankruptcy Reports through Volume 166, p. 498.
Supreme Court Reporter through Volume 114, p. 1877.
North Carolina Law Review through Volume 72, p. 1128.
Wake Forest Law Review through Volume 29, p. 646.
Campbell Law Review through Volume 16, p. 145.
Duke Law Journal through Volume 43, p. 1348.
North Carolina Central Law Journal through Volume 20, p. 229.
Opinions of the Attorney General.

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Chapter 137.
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Article 2.

North Carolina Rural Rehabilitation Corporation.

Sec.
137-31.5. Audit.
137-35. Loans to be made through State Board of Education.

ARTICLE 2.

North Carolina Rural Rehabilitation Corporation.

§ 137-31.5. Audit.

The operations of the Corporation shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. (1953, c. 724, s. 5; 1983, c. 913, s. 26.)

Effect of Amendments. — The 1983 amendment, effective July 22, 1983, rewrote this section, which formerly provided for a periodic audit by the State Auditor, a statement of the financial condition of the Corporation, and the furnishing of copies of such audit and statement.

§ 137-35. Loans to be made through State Board of Education.

The said loans shall be made through and with the assistance of the State Board of Education in the following manner:

(1) As applications for loans are made, the Director of Auxiliary Services and the Director of Vocational and Technical Education, State Department of Public Instruction, will select and recommend rural communities in which vocational agricultural and home economics buildings should be constructed or equipped.

(2) The Local Government Commission will then determine whether the county or school district can, under the Constitution, borrow funds necessary for the construction or equipment of such buildings.

(3) The State Board of Education will then pass upon, and approve or disapprove, the project from the standpoint of the State educational system.

(4) Such projects as have been approved will be submitted to the finance committee of the board of directors of North Carolina Rural Rehabilitation Corporation for final approval.

(5) Upon such final approval the North Carolina Rural Rehabilitation Corporation will deliver to the State Board of Education the funds which are to be advanced.

(6) Said funds will be loaned by the State Board of Education according to the same rules and regulations and legal requirements as those under which the State Literary Fund is now administered.

(7) Said loans will be repayable in ten equal annual installments and will bear interest at four percent (4%) per annum, payable annually, semiannually, or quarterly, as the State Board of Education shall determine.

(8) All loans made by the State Board of Education from such funds so advanced by the Rural Rehabilitation Corporation shall be evidenced by notes payable to the order of the Rural Rehabilitation Corporation and upon completion of said loan, such notes shall be delivered, without further liability upon the State Board of Education, to the Rural Rehabilitation Corporation and a proper receipt taken therefor. (1939, c. 241, s. 2; 1993, c. 180, s. 7.)

Effect of Amendments. — The 1993 amendment, effective December 1, 1993, in subdivision (1) substituted "Auxiliary Services" for "Schoolhouse Planning" and inserted "and Technical".

Chapter 138.

Editor's Note. — The legislation and annotations affecting Chapter 138 have been included in a recently published replacement chapter.

Chapter 139.

Editor's Note. — The legislation and annotations affecting Chapter 139 have been included in a recently published replacement chapter.

Chapter 140.

State Art Museum; Symphony and Art Societies.

Article 1B.

North Carolina Museum of Art.

Sec.
140-5.13. Board of Trustees — establishment; members; selection; quorum; compensation; officers; meetings.

ARTICLE 1B.

North Carolina Museum of Art.

§ 140-5.13. Board of Trustees — establishment; members; selection; quorum; compensation; officers; meetings.

(a) It is the duty of the Department of Cultural Resources to develop policy and to establish and enforce standards for resources, services, and programs involving the arts and the cultural aspects of the lives of the citizens of North Carolina. To attain these objectives, there is hereby established within the Department of Cultural Resources the Board of Trustees of the North Carolina Museum of Art.

(b) The Board of Trustees of the North Carolina Museum of Art shall consist of 28 members, chosen as follows:

(1) The Governor shall appoint twelve members, one from each congressional district in the State in accordance with G.S. 147-12(3b);
(2) The North Carolina Art Society, Incorporated, shall elect four members;
(3) The North Carolina Museum of Art Foundation, Incorporated, shall elect four members;
(4) The Board of Trustees of the North Carolina Museum of Art shall elect four members;
(5) The General Assembly shall appoint four members, two upon the recommendation of the Speaker of the House of Representatives, and two upon the recommendation of the President of the Senate in accordance with G.S. 120-121;
(6) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1191, s. 49.

All regular appointments or elections except those by the General Assembly shall be for terms of six years, except that each member shall serve until his successor is chosen and qualifies. No person may be appointed or elected to more than two consecutive terms of six years. All regular appointments by the General Assembly shall be for the then current legislative term, and no appointee of the General Assembly may be appointed to more than two consecutive terms of two years.

(c) Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. All other vacancies occurring in the regular membership of the Board of Trustees prior to the expiration of a term shall be filled by the same authority and in the same manner as the vacating member was chosen, and the successor member so chosen shall serve for the remainder of the unexpired term of the vacating member.

(d) All initial appointments and elections to the Board of Trustees shall be made on July 1, 1980, or as soon as feasible thereafter except as provided in this subsection, and the terms of all except the legislative appointees shall expire on June 30, 1983, or June 30, 1986, as the case may be. In order to establish regularly overlapping terms, initial appointments and elections to the Board of Trustees shall be made as follows:

(1) Four members at large shall be appointed by the Governor for initial terms of three years and four members at large shall be appointed by the Governor for initial terms of six years.

(2) One member shall be elected by the North Carolina Art Society, Incorporated, for an initial term of three years and two members shall be elected by that Society for initial terms of six years.

(3) One member shall be elected by the North Carolina Museum of Art Foundation, Incorporated, for an initial term of three years and two members shall be elected by that Foundation for initial terms of six years.

(4) One member shall be elected by the Art Commission prior to July 1, 1980, for an initial term of three years and two members shall be elected by that Commission for initial terms of six years. Upon the expiration of the terms of those three members, their successors shall be elected by the Board of Trustees of the North Carolina Museum of Art.

(5) Three members shall be elected by the State Art Museum Building Commission to serve until the termination of that Commission or until June 30, 1983, whichever shall first occur. Upon the termination of the terms of those three members, should such termination occur prior to June 30, 1983, their successors shall be elected as follows: one by the North Carolina Art Society, Incorporated, one by the North Carolina Museum of Art Foundation, Incorporated, and one by the Board of Trustees of the North Carolina Museum of Art; the terms of the successor members so elected shall expire on June 30, 1983. On July 1, 1983, or as soon as feasible thereafter, the successors of these three members shall be elected for terms of six years, as follows: one by the North Carolina Art Society, Incorporated, one by the North Carolina Museum of Art Foundation, Incorporated, and one by the Board of Trustees of the North Carolina Museum of Art.

(6) The initial appointments by the General Assembly shall serve until June 30, 1983. Subsequent appointments shall be for two-year terms commencing July 1, 1983, and biennially thereafter.

(7) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1191, s. 51.

Every vacancy occurring in the initial membership of the Board of Trustees prior to the expiration of a term of office shall be filled by the same authority and in the same manner as the vacating member was chosen and the successor member so appointed shall serve for the remainder of the unexpired term of the vacating member.

(e) Any member of the Board of Trustees may be removed from office by the authority that appointed or elected that member for misfeasance, malfeasance, or nonfeasance in office. In the case of an appointment made by the Governor, removal shall be made in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

(f) A public officer who is appointed or elected to serve on the Board of Trustees shall be deemed to serve thereon as a trustee ex officio and his duties as a trustee shall be deemed additional duties of his primary public office.

(g) The Board of Trustees shall have a chairman, a vice-chairman, and such other officers as the Board deems necessary. The chairman shall be designated by the Governor from among the members of the Board. The vice-chairman shall be elected by and from among the members of the Board. The chairman and vice-chairman shall be chosen for terms of two years or for so long as they are members of the Board, whichever is the shorter period. The Director of the North Carolina Museum of Art shall serve as Secretary to the Board of Trustees and shall attend all meetings, except when the Board is considering issues related to the Director's performance of duties.

(h) The Board of Trustees shall meet at least once in each quarter. The Board may hold special meetings at any time and place within the State at the call of the chairman. The chairman may call a special meeting at his discretion, and he shall call a special meeting upon the written request of a majority of the authorized membership of the Board of Trustees.

(i) A majority of the authorized membership of the Board of Trustees shall constitute a quorum for the transaction of business.

(j) Members of the Board of Trustees who are officers or employees of State agencies or institutions shall receive from funds available to the Department of Cultural Resources subsistence and travel allowances at the rates authorized by G.S. 138-6. All other members of the Board of Trustees shall receive from funds available to the Department of Cultural Resources per diem and travel and subsistence allowances at the rates authorized by G.S. 138-5.

(k) All clerical and administrative services required by the Board of Trustees shall be supplied by the office of the Director of the North Carolina Museum of Art. (1979, 2nd Sess., c. 1306, s. 1; 1981 (Reg. Sess., 1982), c. 1191, ss. 49-52; 1987, c. 842, ss. 1, 2; 1991, c. 756, s. 35.)

Effect of Amendments. — The 1991 amendment, effective July 16, 1991, in subsection (b) substituted "28 members" for "25 members" in the introductory language, substituted "twelve members" for "eleven members" in subdivision (1), and in subdivision (5) substituted "four members" for "two members", and substituted "two upon" for "one upon" in two places.

Chapter 140A.

State Awards System.

Sec.
140A-3. Annual awards to natives living outside State.

§ 140A-3. Annual awards to natives living outside State.

Awards may be made annually to native-born North Carolinians, living outside of North Carolina, for preeminent accomplishment in not more than two of the above fields of creative endeavor. (1961, c. 1143, s. 3; 1991, c. 131, s. 1.)

Effect of Amendments. — The 1991 amendment, effective May 27, 1991, rewrote this section.

Chapter 142.

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Article 3A.

Refunding Bonds.

Sec.
142-29.5. Authorization of refunding obligations.

ARTICLE 3A.

Refunding Bonds.

§ 142-29.5. Authorization of refunding obligations.

By and with the consent of the Council of State, the State Treasurer is authorized to issue and sell, from time to time, refunding obligations for the purpose of refunding outstanding obligations as and to the extent authorized by this Article. The principal amount of any such refunding obligations shall not exceed the principal amount of outstanding obligations to be refunded unless (i) the refunding results in an aggregate debt service savings and (ii) the increase in the principal amount issued does not create cash-in-hand available for new capital improvements.

Refunding obligations issued pursuant to the provisions of this Article shall not be subject to limitations imposed by any other law including, without limitation, the other Articles of this Chapter. (1935, c. 445, s. 5; 1985 (Reg. Sess., 1986), c. 823, s. 1; 1993, c. 542, s. 13.)

Editor's Note. — Session Laws 1993, c. 542, which amended this section, in s. 15 sets forth various provisions for the interpretation of the act, including, among others, liberal construction. Subsection (e) of s. 15 is a severability clause.

Effect of Amendments. — The 1993 amendment, effective July 24, 1993, inserted "unless (i) the refunding results in an aggregate debt service savings and (ii) the increase in the principal amount issued does not create cash-in-hand available for new capital improvements" at the end of the first paragraph.

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143-296. (Effective June 30, 1995 — See editor's note) Powers of Industrial Commission; deputies.

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ARTICLE 1.

Executive Budget Act.

§ 143-1. Scope and definitions.

Editor's Note. — Session Laws 1983, c. 761, s. 257; 1983 (Reg. Sess., 1984), c. 971, s. 5 and c. 1034, s. 252; 1985, c. 479, s. 228; 1985 (Reg. Sess., 1986), c. 1014, s. 238 and c. 1018, s. 18; 1987, c. 738, s. 235 and c. 830, s. 119; 1987 (Reg. Sess., 1988), c. 886, s. 4, c. 1086, s. 166, c. 1100, s. 41 and c. 1101, s. 15; 1989, c. 500, s. 125 and c. 752, s. 163; 1989 (Reg. Sess., 1990), c. 1066, s. 147 and c. 1074, s. 39; Session Laws 1991, c. 689, s. 350; Session Laws 1991 (Reg. Sess., 1992), c. 900, s. 177, Session Laws 1993, c. 321, s. 319, and Session Laws 1994, Extra Session, c. 24, s. 69 provide that the provisions of the Executive Budget Act, Chapter 143, Article 1 of the General Statutes, are reenacted and shall remain in full force and effect and are incorporated in the act by reference.

Session Laws 1993, c. 321, s. 22, effective July 1, 1993, as amended by Session Laws 1994, Extra Session, c. 24, s. 55, creates the Budget Practices Study Commission, an independent commission to study the effectiveness of the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes. The Budget Practices Study Commission shall examine the current content, interpretation, and application of the Executive Budget Act, and shall address the particular topics set forth in the act. The Budget Practices Study Commission shall report its findings and recommendations to the 1995 General Assembly upon its convening.

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43 provides: "The provisions of the Executive Budget Act, Chapter 143, Article 1 of the General Statutes are reenacted and shall remain in full force and effect and are incorporated in this act by reference."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

§ 143-3.3. Assignments of claims against State.

Editor's Note. — Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

§ 143-3.5. Coordination of statistics; fiscal analysis required for any bill proposed by a State agency that affects the budget.

(a) It shall be the duty of the Director, through the Office of State Budget and Management and the Office of State Planning to coordinate the efforts of governmental agencies in the collection, development, dissemination and analysis of official economic, demographic and social statistics pertinent to State budgeting. The Director shall:

(1) Prepare and release the official demographic and economic estimates and projections for the State;
(2) Conduct special economic and demographic analyses and studies to support statewide budgeting;
(3) Develop and coordinate cooperative arrangements with federal, State and local governmental agencies to facilitate the exchange of data to support State budgeting;
(4) Compile, maintain, and disseminate information about State programs which involve the distribution of State aid funds to local governments including those variables used in their allocation;
(5) Develop and maintain in cooperation with other State and local governmental agencies, an information system providing comparative data on resources and expenditures of local governments; and
(6) Report major trends that influence revenues and expenditures in the State budget in the current fiscal year and that may influence revenues and expenditures over the next five fiscal years.

Every fiscal analysis prepared by the Director or the Office of State Budget and Management addressing the State budget outlook shall encompass the upcoming five-year period. Every fiscal analysis prepared by the Director or the Office of State Budget and Management addressing the impact of proposed legislation on the State budget shall estimate the impact for the first five fiscal years the legislation would be in effect. To minimize duplication of effort in collecting or developing new statistical series pertinent to State planning and budgeting, including contractual arrangements, State agencies must submit to the Director proposed procedures and funding requirements.

(b) Any bill proposed by an executive or judicial department, agency, institution, board, or commission that affects the State budget shall be accompanied by a fiscal analysis. The fiscal analysis shall estimate the impact of the legislation on the State budget for the first five fiscal years the legislation would be in effect.

(c) This section shall not apply to the General Assembly, any of its committees and subcommittees, the Legislative Research Commission, the Legislative Services Commission, or any other committee or commission in the legislative branch. (1979, 2nd Sess., c. 1137, s. 41; 1991, c. 689, s. 341; 1993 (Reg. Sess., 1994), c. 769, s. 11.1(b).)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 1, 1994, added "fiscal analysis required for any bill proposed by a State agency that affects the budget" to the section catchline; inserted the subsection (a) and (c) designations, inserted "and the Office of State Planning" in the first sentence of subsection (a), substituted "Director" for "Office" near the beginning of the second sentence of subsection (a), added subdivision (a)(6) and made related changes, and added subsection (b).

§ 143-6.1. Information from private organizations receiving State funds; information from State departments and agencies providing State funds.

OPINIONS OF ATTORNEY GENERAL

Private home health agencies which receive funds from the Division of Adult Health, Department of Environment, Health and Natural Resources, are subject to the audit requirements of this section. See opinion of the Attorney General to John C. Hunter, Gen. Counsel, Dept. of Environment, Health and Natural Resources, 60 N.C.A.G. 82 (1991).

§ 143-10.3. Strategic planning process.

(a) The Director, through the Office of State Budget and Management, shall establish and implement a strategic planning process for State government. The strategic planning process shall be designed to produce statewide goals, and State agencies shall develop agency goals and objectives that are consistent with those statewide goals. The Director, in conjunction with State agencies, shall prepare and apply performance measures and indicators of program impact, and shall require agency performance to be reviewed periodically to determine progress toward statewide goals and agency goals. Results of the strategic planning process and agency performance reviews shall be reflected in the budget document proposed by the Governor, as provided in G.S. 143-10.4.

The performance measures and indicators of program impact for each agency shall be based upon clear, unambiguous goals that are established by that agency. The Director shall be responsible for developing and implementing statewide comprehensive performance measures and indicators of program impact in a standardized format applicable across agency lines.

(b) If a member of the Council of State does not agree with the performance measures, departmental operations plans, and indicators of program impact developed in accordance with this section, G.S. 143-10.4, and G.S. 143-10.5, that apply to the member's department, the member of the Council of State shall submit to the Director of the Budget a statement of specific objections to the program measures and indicators of program impact. The Director of the Budget shall submit the statement to the General Assembly in accordance with G.S. 143-11(6). (1993 (Reg. Sess., 1994), c. 769, s. 11.1(c).)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.6, made this section effective July 1, 1994.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

§ 143-10.4. Departmental operations plans.

The Director, through the Office of State Budget and Management and in conjunction with State agencies, shall have prepared biennially in the even-numbered years, a comprehensive operations plan for each department, agency, and institution, for which the Director may recommend an appropriation of State funds in the next biennial period. The operations plans shall address the statewide and agency goals contained in the strategic plans developed in accordance with G.S. 143-10.3. The operations plans shall provide objectives, activities, and supporting statistics for the current biennium and for the following three biennial periods. The operations plans shall also provide clear, unambiguous performance measures and outcome indicators, which measures and indicators shall be used for program evaluation and shall be reported in the Governor's biennial budget submission.

The Director shall provide unified planning and budgeting instructions to the departments, agencies, and institutions for use in developing operations plans and biennial budgets. (1993 (Reg. Sess., 1994), c. 769, s. 11.1(c).)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.6, made this section effective July 1, 1994.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

§ 143-10.5. Development of performance measures for major programs.

(a) The Director of the Budget, through the Office of State Budget and Management and through State agencies, departments, and institutions, shall develop performance measures for the major programs for each State agency, department, and institution. These performance measures shall be developed as part of the biennial comprehensive plan and shall serve as the basis for the development of the biennial budget, beginning with the 1995-97 fiscal biennium.

(b) The Director shall institute a standard process for developing program performance measures and for evaluating performance results, uniform performance measurement terms, and a standardized format for presentation.

(c) The program performance measurement system shall include:

(1) A description of the key performance measures for the program. The performance measures should include: program efficiency or unit cost, outputs or program activity, and outcomes or performance results, with emphasis on the use of program outcome measures.
(2) Identification and description of the current level of performance.
(3) Targets for the desired level of performance.
(4) Identification of future performance measures that should be developed and a time frame for development.
(5) A methodology for regular monitoring of departmental, agency, and institutional performance in relation to the measure.
(6) A methodology for assessing programs that have achieved the desired performance targets through innovative management actions.

(d) The Director of the Budget shall prepare a comprehensive plan for the implementation of a performance measurement system and shall present the plan to the General Assembly at the same time the 1995-97 fiscal biennium budget is submitted to the General Assembly. With regard to programs for which it is anticipated that performance measures will not be fully developed by that date, the Director of the Budget shall submit to the General Assembly at that time, a plan and timetable for the development and implementation of performance measures. In developing the plan, consideration shall be given to any recommendations and reports of the Governmental Accounting Standards Board. In the event the Director shall conclude that it is not feasible to develop performance measures for particular programs, the Director shall set forth detailed reasons for the conclusion in the report.

(e) Beginning in 1996, the Director of the Budget shall report to the General Assembly no later than February 1 in odd-numbered years and no later than April 1 in even-numbered years on:

(1) The status of the development of the program performance measurement system.
(2) The programs that have not achieved the desired level of performance and the reasons performance targets were not achieved.
(3) The programs that have achieved performance targets through management innovation. (1993 (Reg. Sess., 1994), c. 769, s. 11.1(c).)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.6, made this section effective July 1, 1994.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

§ 143-10.6. Responsibilities of other State agencies.

All State agencies, departments, and institutions shall cooperate with the Director of the Budget to assist in the implementation of strategic planning, departmental planning, and performance budgeting. The Director of the Budget may assign any responsibility to any State agency, department, or institution as appropriate or needed to implement strategic planning, departmental planning, and performance budgeting. (1993 (Reg. Sess., 1994), c. 769, s. 11.1(c).)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.6, made this section effective July 1, 1994.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

§ 143-11. Survey of departments.

On or before the fifteenth day of December, biennially in the even-numbered years, the Director shall make a complete, careful survey of the operation and management of all the departments, bureaus, divisions, officers, boards, commissions, institutions, and agencies and undertakings of the State and all persons or corporations who use or expend State funds, in the interest of economy and efficiency, and of obtaining a working knowledge upon which to base recommendations to the General Assembly as to appropriations for maintenance and special funds and capital expenditures for the succeeding biennium. If the Director and the Commission shall agree in their recommendations for the budget for the next biennial period, he shall prepare their report in the form of a proposed budget, together with such comment and recommendations as they may deem proper to make. If the Director and Commission shall not agree in substantial particulars, the Director shall prepare the proposed budget based on his own conclusions and judgment, and the Commission or any of its members retain the right to submit separately to the General Assembly such statement of disagreement and the particulars thereof as representing their views. The budget report shall contain a complete and itemized plan in accordance with G.S. 143-10.3, 143-10.4, and 143-10.5 of all proposed expenditures for each State department, bureau, board, division, institution, commission, State agency or undertaking, person or corporation who receives or may receive for use and expenditure any State funds, in accordance with the classification of funds and accounts adopted by the State Controller, and of the estimated revenues and borrowings for each year in the ensuing biennial period beginning with the first day of July thereafter. Opposite each item of the proposed expenditures, the budget shall show in separate parallel columns the amount expended for the last preceding fiscal year, for the current fiscal year, and the increase or decrease. The budget shall clearly differentiate between general fund expenditures for operating and maintenance, special fund expenditures for any purpose, and proposed capital improvements.

The Director shall accompany the budget with:

(1) A budget message supporting his recommendations and outlining a financial policy and program for the ensuing

biennium. The message will include an explanation of increase or decrease over past expenditures, a discussion of proposed changes in existing revenue laws and proposed bond issues, their purpose, the amount, rate of interest, term, the requirements to be attached to their issuance and the effect such issues will have upon the redemption and annual interest charges of the State debt.

(2) State Controller reports including:
   a. An itemized and complete financial statement for the State at the close of the last preceding fiscal year ending June 30.
   b. A statement of special funds.

(2a) A statement showing the itemized estimates of the condition of the State treasury as of the beginning and end of each of the next two fiscal years.

(3) A report on the fees charged by each State department, bureau, division, board, commission, institution, and agency during the previous fiscal year, the statutory or regulatory authority for each fee, the amount of the fee, when the amount of the fee was last changed, the number of times the fee was collected during the prior fiscal year, and the total receipts from the fee during the prior fiscal year.

(4) A statement showing the State Board of Education's request, in accordance with G.S. 115C-96, for sufficient funds to provide textbooks to public school students.

(5) A proposal for expenditure of the funds in the Repairs and Renovations Reserve Account, which is established in G.S. 143-15.3A. The Director shall consider the data from the Facilities Condition and Assessment Program in the Office of State Construction when establishing priorities for the proposed expenditure of these funds.

(6) Statements of the objections of members of the Council of State received pursuant to G.S. 143-10.3(b) to the performance measures, departmental operations plans, and indicators of program impact prepared in accordance with G.S. 143-10.3, 143-10.4, and 143-10.5.

(7) A list of the budget requests of members of the Council of State that are not included in the proposed budget.

It shall be a compliance with this section by each incoming Governor, at the first session of the General Assembly in his term, to submit the budget report with the message of the outgoing Governor, if he shall deem it proper to prepare such message, together with any comments or recommendations thereon that he may see fit to make, either at the time of the submission of the said report to the General Assembly, or at such other time, or times, as he may elect and fix.

The function of the Advisory Budget Commission under this section applies only if the Director of the Budget consults with the Commission in preparation of the budget. (1925, c. 89, s. 12; 1929, c. 100, s. 11; 1983, c. 717, s. 54; 1985 (Reg. Sess., 1986), c. 955, s. 62; c. 1024, ss. 11-13; 1989, c. 752, s. 49; 1991, c. 542, s. 6; 1991 (Reg. Sess., 1992), c. 900, s. 81(b); 1993, c. 321, s. 17.1(d); 1993 (Reg. Sess., 1994), c. 769, s. 11.1(d).)

Editor's Note. —

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

This section was amended by Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 11.1(d) in the coded bill drafting format provided by § 120-20.1 The act added new subdivisions (5) and (6) without taking account of subdivision (5) added by Session Laws 1993, c. 321, s. 17.1(d). The new subdivisions have been redesignated as (6) and (7) at the direction of the Revisor of Statutes.

Effect of Amendments. —

The 1993 (Reg. Sess., 1994) amendment, effective July 1, 1994, inserted "in accordance with G.S. 143-10.3, 143-10.4, and 143-10.5" and "of funds and accounts" in the fourth sentence of the first paragraph, substituted "fiscal" for "appropriation" twice in the fifth sentence of the first paragraph and once in subdivision (2a) of the second paragraph, substituted "improvements" for "outlays" in the last sentence of the first paragraph, and added subdivisions (5) and (6) (now (6) and (7)) of the second paragraph.

§ 143-15.1. Current Operations Appropriations Act; General Fund Financial Model.

(a) The General Assembly shall enact the Current Operations Appropriations Act by June 15 of odd-numbered years and by June 30 of even-numbered years in which a Current Operations Appropriations Act is enacted. The Current Operations Appropriations Act shall state the amount of General Fund appropriations availability upon which the General Fund budget is based. The statement of availability shall list separately the beginning General Fund credit balance, General Fund revenues, and any other components of the availability amount.

The General Fund operating budget appropriations, including appropriations for local tax reimbursements and local tax sharing, for the second year in a Current Operations Appropriations Act that contains a biennial budget shall not be more than two percent (2%) greater than the General Fund operating budget appropriations for the first year of the biennial budget.

(b) The General Assembly shall review the results of the General Fund Financial model, a computer-based financial model used to project long-term expenditure and revenue trends under various simulations, in its budget deliberations. The model shall be maintained and, from time to time, updated by the Fiscal Research Division of the General Assembly. (1991, c. 689, s. 346; 1991 (Reg. Sess., 1992), c. 993, s. 11; 1993 (Reg. Sess., 1994), c. 769, s. 11.3.)

Editor's Note. —

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

Effect of Amendments. —

The 1993 (Reg. Sess., 1994) amendment, effective July 1, 1994, added "General Fund Financial Model" to the section catchline, inserted the subsection (a) designation, and added subsection (b).

§ 143-15.2. Use of General Fund credit balance.

The State Controller shall reserve up to one-fourth of any unreserved credit balance, as determined on a cash basis, remaining in the General Fund at the end of each fiscal year to the Savings Reserve Account as provided in G.S. 143-15.3, unless that would result in the Savings Reserve Account having funds in excess of five percent (5%) of the amount appropriated the preceding year for the General Fund operating budget, including local government tax-sharing funds; in that case, only funds sufficient to reach the five percent (5%) level shall be reserved. The State Controller shall also reserve the lesser of (i) one-fourth of any unreserved credit balance, as determined on a cash basis, remaining in the General Fund and (ii) one and one-half percent (1.5%) of the replacement value of all State buildings supported from the General Fund, at the end of each fiscal year to the Repairs and Renovations Reserve Account as provided in G.S. 143-15.3A. The General Assembly may appropriate that part of the anticipated General Fund credit balance not expected to be reserved to the Savings Reserve Account or the Repairs and Renovations Reserve Account only for capital improvements or other one-time expenditures. As used in this section, the term "unreserved credit balance" means the credit balance amount, as determined on a cash basis, before funds are reserved by the Controller to the Savings Reserve Account or the Repairs and Renovations Reserve Account pursuant to G.S. 143-15.3 and G.S. 143-15.3A. (1991, c. 689, s. 346; 1991 (Reg. Sess., 1992), c. 812, s. 7(a), (c); c. 993, s. 12; 1993, c. 321, s. 17.1(a); 1993 (Reg. Sess., 1994), c. 591, s. 5(a).)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective June 30, 1994, in the first and second sentences inserted "unreserved," and added the last sentence.

§ 143-15.3. Savings Reserve Account.

(a) There is established a Savings Reserve Account as a restricted reserve in the General Fund. The State Controller shall reserve to the Savings Reserve Account one-fourth of any unreserved credit balance remaining in the General Fund at the end of each fiscal year until the account contains funds equal to five percent (5%) of the amount appropriated the preceding year for the General Fund operating budget, including local government tax-sharing funds. If the balance in the Savings Reserve Account falls below this level during a fiscal year, the State Controller shall reserve to the Savings Reserve Account for the following fiscal years up to one-fourth of any unreserved credit balance remaining in the General Fund at the end of each fiscal year until the account again equals five percent (5%) of the amount appropriated the preceding year for the General Fund operating budget, including local government tax-sharing funds. As used in this section, the term "unreserved credit balance" means the credit balance amount, as determined on a cash basis, before funds are reserved by the Controller to the Savings Reserve Account or the Repairs and Renovations Reserve Account pursuant to this section and G.S. 143-15.3A.

(b) The Director may not use funds in the Savings Reserve Account unless the use has been approved by an act of the General

Assembly. (1991, c. 689, s. 346; 1991 (Reg. Sess., 1992), c. 812, s. 7(b), (c); c. 900, s. 11; c. 993, s. 13; 1993, c. 321, ss. 17.1(c), 21.2; 1993 (Reg. Sess., 1994), c. 591, s. 5(b); c. 769, s. 7.27(b).)

Editor's Note. —

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

Effect of Amendments. —

Session Laws 1993 (Reg. Sess., 1994), c. 591, s. 5, effective June 30, 1994, in subsection (a), in the last sentence deleted "that part of" following "means," substituted "balance amount" for "balance," substituted "before funds are reserved by the Controller to" for "not already reserved to," and added at the end "pursuant to this section and G.S. 143-15.3A."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 7.27(b), effective July 1, 1994, deleted the last two sentences of subsection (b), relating to the General Assembly's intent that the State's liability for the deferral of the twelfth month of teacher payroll be eliminated.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 7.27(a) provides for the use of funds appropriated for a Reserve for Paydate Restoration to restore the twelfth month of teacher payroll for school teachers paid from the General Fund, and states that in no event shall any allotments exceed the actual General Fund requirement.

§ 143-15.3A. Repairs and Renovations Reserve Account.

(a) There is established a Repairs and Renovations Reserve Account as a restricted reserve in the General Fund. The State Controller shall reserve to the Repairs and Renovations Reserve Account one-fourth of any unreserved credit balance remaining in the General Fund at the end of each fiscal year. As used in this section, the term "unreserved credit balance" means the credit balance amount, as determined on a cash basis, before funds are reserved by the Controller to the Savings Reserve Account or the Repairs and Renovations Reserve Account pursuant to this section and G.S. 143-15.3.

(b) The funds in the Repairs and Renovations Reserve Account shall be used only for the repair and renovation of State facilities and related infrastructure that are supported from the General Fund. The Director of the Budget shall not use funds in the Repairs and Renovations Reserve Account unless the use has been approved by an act of the General Assembly. (1993, c. 321, s. 17.1(b); c. 561, s. 16; 1993 (Reg. Sess., 1994), c. 591, s. 5(c).)

Editor's Note. —

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 35 amends Session Laws 1993, c. 561, s. 22, to refer to the 1994-95 fiscal year.

Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Effect of Amendments. —

The 1993 (Reg. Sess., 1994) amendment, effective June 30, 1994, in subsection (a), in the third sentence deleted "that part of" following "means," substituted "balance amount" for "balance," substituted "before funds are reserved by the Controller to" for "not already reserved to," and added "pursuant to this section and G.S. 143-15.3" at the end.

§ 143-16.3. No expenditures for purposes for which the General Assembly has considered but not enacted an appropriation.

Editor's Note. —

Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1994, Extra Session, c. 24, s. 72 provides that section 9 of Chapter 321 of Session Laws 1993, which permitted deviation by the Director of the Budget from this section, does not apply to Session Laws 1994, Extra Session, c. 24.

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 18.2 provides: "Of the funds appropriated to the Department of Community Colleges in Chapter 321 of the 1993 Session Laws for the State Board Reserve, forty-six thousand dollars ($46,000) shall be allocated to fund the additional costs associated with the automated central cataloging of library books.

"Notwithstanding G.S. 143-16.3, the State Board may use up to three hundred thousand dollars ($300,000) from the State Board Reserve to fund the community colleges leadership development programs that were a part of the State Board Reserve to fund the community colleges leadership development programs that were a part of the State Board's budget request to the 1994 Regular Session of the 1993 General Assembly."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 27.18 provides: "Notwithstanding G.S. 143-16.3, the Divisions of Parks and Recreation and of Coastal Management of the Department of Environment, Health, and Natural Resources may apply to the North Carolina Recreation and Natural Heritage Trust, and other State and federal agencies for funds to acquire Occoneechee Mountain, Bird Island, and additional land at Hammocks Beach State Park."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

§ 143-23. All maintenance funds for itemized purposes; transfers between objects and items.

(a) All appropriations now or hereafter made for the maintenance of the various departments, institutions and other spending agencies of the State, are for the (i) purposes or programs and (ii) objects or line items enumerated in the itemized requirements of such departments, institutions and other spending agencies submitted to the General Assembly by the Director of the Budget and the Advisory Budget Commission, as amended by the General Assembly. The function of the Advisory Budget Commission under this subsection applies only if the Director of the Budget consults with the Commission in preparation of the budget.

(a1) No transfers may be made between objects or line items in the budget of any department, institution, or other spending agency; however, with the approval of the Director of the Budget, a department, institution, or other spending agency may spend more than was appropriated for an object or line item if the overexpenditure is:

(1) In a purpose or program for which funds were appropriated for that fiscal period and the total amount spent for the purpose or program is no more than was appropriated for the purpose or program for the fiscal period;

(2) Required to continue a purpose or program because of unforeseen events, so long as the scope of the purpose or program is not increased;

(3) Required by a court, Industrial Commission, or administrative hearing officer's order or award or to match unanticipated federal funds;

(4) Required to respond to an unanticipated disaster such as a fire, hurricane, or tornado; or

(5) Required to call out the National Guard.

If the total of all overexpenditures of a line item approved by the Director of the Budget for a fiscal year for the purposes set out in subdivisions (1) and (2) of this subsection exceeds ten percent (10%) of the line item amount in the budget enacted by the General Assembly, the Director of the Budget shall report monthly to the Joint Legislative Commission on Governmental Operations. The report shall include the reasons that make overexpenditures necessary and any unforeseen events necessitating overexpenditures that occurred after the budget was enacted by the General Assembly.

The Director of the Budget shall report on a quarterly basis to the Joint Legislative Commission on Governmental Operations, the Fiscal Research Division of the Legislative Services Office, and the State Auditor the reason if the amount expended for a purpose or program is more than the amount appropriated for it from all sources. If the overexpenditure was authorized under subdivision (2) of this subsection, the Director of the Budget shall identify in the report the unforeseen event that required the overexpenditure.

(a2) Funds appropriated for salaries and wages are also subject to the limitation that they may only be used for:

(1) Salaries and wages or for premium pay, overtime pay, longevity, unemployment compensation, workers' compensation, temporary wages, moving expenses of employees, payment of accumulated annual leave, certain awards to employees, tort claims, and employer's social security, retirement, and hospitalization payments;

(2) Contracted personal services if (i) the contract is for temporary services or special project services, (ii) the term of the contract does not extend beyond the fiscal year, (iii) the contract does not impose obligations on the State after the end of the fiscal year; and (iv) the total of all overexpenditures for contracted personal services approved in a program for a fiscal year does not exceed the greater of five hundred thousand dollars ($500,000) or ten percent (10%) of the lapsed salary funds in the program for the fiscal year; and

(3) Uses for which overexpenditures are permitted by subdivisions (3), (4), and (5) of subsection (a1) of this section but the Director of the Budget shall include such use and the reason for it in his quarterly report to the Joint Legislative

Commission on Governmental Operations, the Fiscal Research Division of the Legislative Services Office, and the State Auditor.

Lapsed salary funds that become available from vacant positions are also subject to the limitation that they may not be used for new permanent employee positions or to raise the salary of existing employees.

(a3) The requirements in this section that the Director of the Budget report to the Joint Legislative Commission on Governmental Operations and the State Auditor shall not apply to expenditures of receipts by entities that are wholly receipt supported, except for entities supported by the Wildlife Resources Fund.

(a4) The State Auditor shall review the report received from the Director of the Budget to ensure that the transfer complied with the intent and the provisions of this Article and shall report the Auditor's findings to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division.

(b) Repealed by Session Laws 1985, c. 290, s. 8.

(c) Transfers or changes as between objects or line items in the budget of the Senate may be made by the President Pro Tempore of the Senate;

(d) Transfers or changes as between objects or line items in the budget of the House of Representatives may be made by the Speaker of the House of Representatives;

(e) Transfers or changes as between objects or line items in the budget of the General Assembly other than of the Senate and House of Representatives may be made jointly by the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

(f) As used in this section:

(1) "Object or line item" means a budgeted expenditure or receipt in the budget enacted by the General Assembly that is designated by (i) a thirteen-digit code in the 1000-object code series or (ii) an eleven-digit code in all other object code series, in accordance with the Budget Code Structure and the State Accounting System Uniform Chart of Accounts set out in the Administrative Policies and Procedures Manual of the Office of the State Controller.

(2) "Purpose or program" means a group of objects or line items for support of a specific activity outlined in the budget adopted by the General Assembly that is designated by a nine-digit fund code in accordance with the Budget Code Structure and the State Accounting System Uniform Chart of Accounts set out in the Administrative Policies and Procedures Manual of the Office of the State Controller. (1929, c. 100, s. 24; 1981, c. 1127, s. 82; 1985, c. 290, s. 8; c. 479, s. 159; c. 757, s. 183; 1985 (Reg. Sess., 1986), c. 955, s. 72; 1989, c. 752, s. 44; 1991 (Reg. Sess., 1992), c. 812, s. 6(c); c. 900, s. 9(a); 1994, Ex. Sess., c. 24, s. 9(a)-(c); 1993 (Reg. Sess., 1994), c. 769, s. 13.)

Editor's Note. —

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 13 amended this section in the coded bill drafting format provided in § 120-20.1. The amendment did not take account of the amendment by the 1994 Extra Session. The section has been set out as above at the direction of the Revisor of Statutes.

Session Laws 1993, c. 321, s. 241, as amended by Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 25.23, provides that the Secretary of Human Resources, with the approval of the Office of State

Budget and Management, may use any funds appropriated or otherwise available in the 1993-94 fiscal year to conduct a pilot of a subsidy to homes for the aged and disabled and family care homes to support the provision of habilitative and related services needed by developmentally disabled persons who reside there. The Department shall present the results of the pilot to the General Assembly by April 15, 1995.

Session Laws 1994, Extra Session, c. 24, which amended this section, in s. 3 provides: "This act shall be known as the Crime Control and Prevention Act of 1994."

Session Laws 1994, Extra Session, c. 24, which amended this section, in s. 9(d) provides: "Effective from the ratification of this act [March 26, 1994] through June 30, 1994, subsection (a) of this section does not apply to contracts entered into by the Department of Correction for the confinement of prisoners in non-State facilities."

Session Laws 1994, Extra Session, c. 24, which amended this section, in s. 9(e) provides: "The Director of the Budget shall either realign the line items in the proposed supplemental budget for the 1994-95 fiscal year so as to minimize overexpenditures of funds pursuant to G.S.143-23 or include with the proposed supplemental budget for the 1994-95 fiscal year a statement identifying the line items that have been consistently overexpended pursuant to G.S. 143-23 over the prior two fiscal bienniums."

Session Laws 1994, Extra Session, c. 24, s. 30(e) provides: "Notwithstanding 143-23, and with the approval of the Office of State Budget and Management, the Department of Human Resources may use up to two hundred thousand dollars ($200,000) of the funds appropriated or otherwise available for the 1993-94 fiscal year to begin implementation of this section [relating to the Support Our Students (S.O.S.) Program] prior to July 1, 1994. The amount available to implement this section for the 1994-95 fiscal year shall be reduced by the amount spent prior to July 1, 1994."

Session Laws 1994, Extra Session, c. 24, s. 31(e) provides: "Notwithstanding G.S. 143-23, and with the approval of the Office of State Budget and Management, the Department of Human Resources may use up to two hundred thousand dollars ($200,000) of the funds appropriated or otherwise available for the 1993-94 fiscal year to begin implementation of this section [relating to the Family Resource Center Grant Program] prior to July 1, 1994. The amount available to implement this section for the 1994-95 fiscal year shall be reduced by the amount spent prior to July 1, 1994."

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1994, Extra Session, c. 24, s. 71 is a severability clause.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

Effect of Amendments. —

Session Laws 1994, Extra Session, c. 24, s. 9(a), effective March 26, 1994, added the subsection (a2) and (a3) designations; in subsection (a2) added the subdivision (a2)(1), (a2)(2), and (a2)(3) designations; deleted "(i) salaries" from the end of the introductory language of (a2); in (a2)(1) added "Salaries" at the beginning, substituted "moving expenses of employees" for "contracted personal services, moving expenses", and deleted "or (ii) uses" from the end; added subdivision (a2)(2); in subdivision (a2)(3) added "Uses" at the beginning, added "(a1) of this section", and made stylistic changes.

Session Laws 1994, Extra Session, c. 24, s. 9(b) and (c), effective July 1, 1994, added the two sentences at the end of the first paragraph of subsection (a1), following subdivision (5); and in subdivision (a2)(2) added the language beginning "(iv) the total" and ending "for the fiscal year; and", and deleted "and" preceding "(iii)".

The 1993 (Reg. Sess., 1994) amendment, effective July 1, 1994, in subsection (a1), deleted "and to" following "Governmental Operations" and inserted "and the State Auditor" in the first sentence of the second paragraph and near the end of present subdivision (a2)(3), inserted "and the State Auditor" in present subsection (a3), and added present subsection (a4).

§ 143-23.2. Transfers to Department of Human Resources.

Editor's Note. — Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

§ 143-31.4. Non-State match restrictions.

Editor's Note. — Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

§ 143-32. (See editor's note for date change) Person expending an appropriation wrongfully.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Cited in Bardolph v. Arnold, 112 N.C. App. 190, 435 S.E.2d 109.

§ 143-34. (Effective October 1, 1994 — See editor's note) Penalties and punishment for violations.

A refusal to perform any of the requirements of this Article, and the refusal to perform any rule or requirement or request of the Director of the Budget made pursuant to, or under authority of, the Executive Budget Act, shall subject the offender to penalty of two hundred fifty dollars ($250.00), to be recovered in an action instituted either in Wake County Superior Court, or any other county, by the Attorney General for the use of the State of North Carolina, and shall also constitute a Class 1 misdemeanor. If such offender be not an officer elected by vote of the people, such offense shall be sufficient cause for removal from office or dismissal from employment by the Governor upon 30 days' notice in writing to such offender. (1929, c. 100, s. 36; 1993, c. 539, s. 1003; 1994, Ex. Sess., c. 14, s. 61; c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1994, Extra Session, c. 14, s. 73 provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

The 1994 Extra Session amendment, effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date, deleted "and" following "two hundred."

§ 143-34.1. (Effective until December 31, 1997) Positions included in the State's payroll must be approved by the Director of Budget; payment of benefits and other salary-related items must be made from same source as salary; dependent care assistance program authorized; flexible compensation benefits authorized.

Editor's Note. — Session Laws 1991 (Reg. Sess., 1992), c. 1044, which amended this section, in s. 14(i), as amended by Session Laws 1993, c. 561, s. 42, and by Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 7.28A, provides that the amendments to this section by c. 1044 shall expire December 31, 1997.

ARTICLE 3.

Purchases and Contracts.

§ 143-48. State policy; cooperation in promoting the use of small, minority, physically handicapped and women contractors; purpose; required annual reports.

Editor's Note. —

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 24.2 provides: "The Director of the Administrative Office of the Courts may establish local community penalties programs and appoint staff the Director considers necessary. These personnel may serve as full-time or part-time State employees or, alternatively, their activities may be provided on a contractual basis when determined appropriate by the Director. The contracts shall be exempt from competitive bidding procedures under Chapter 143 of the General Statutes. The Administrative Office of the Courts shall adopt rules necessary and appropriate for the administration of the program, including rules that allow plans to be presented at the request of the sentencing judge. Funds appropriated by the General Assembly for the establishment and maintenance of community penalties programs under this Article shall be administered by the Administrative Office of the Courts. Any contract entered into under the authority of this section shall expire not later than June 30, 1995."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

§ 143-53.1. Setting of benchmarks; increase by Secretary.

On and after July 1, 1990, the expenditure benchmark prescribed by G.S. 143-52 with respect to competitive bid procedures and the bid value benchmark authorized by G.S. 143-53(2) with respect to rule making by the Secretary of Administration for competitive bidding shall be ten thousand dollars ($10,000); provided, the Secretary of Administration may, in his discretion, increase the benchmarks effective as of the beginning of any fiscal biennium of the State commencing after June 30, 1992, in an amount whose increase, expressed as a percentage, does not exceed the rise in the Consumer Price Index during the fiscal biennium next preceding the effective date of the benchmark increase. For a special responsibility constituent institution of The University of North Carolina, the benchmark prescribed in this section shall be thirty-five thousand dollars ($35,000). (1989 (Reg. Sess., 1990), c. 936, s. 3(c); 1991, c. 689, s. 206.2(b); 1993 (Reg. Sess., 1994), c. 591, s. 10(a); c. 769, s. 17.6(b).)

Editor's Note. — Section 206.2 of Session Laws 1991, c. 689, which amended this section, originally provided in s. 206.2(f) that the amendment by s. 206.2(b) to this section would expire June 30, 1994. However, Session Laws 1993 (Reg. Sess., 1994), c. 591, s. 10, deleted this expiration provision.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Effect of Amendments. —

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 17.6(b), effective July 1, 1994, substituted "thirty-five thousand dollars ($35,000)" for "twenty-five thousand dollars ($25,000) on and after July 1, 1991" in the last sentence.

§ 143-54. (Effective October 1, 1994 — See editor's note) Certification that bids were submitted without collusion.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143-58.1. (See editor's note for date change) Unauthorized use of public purchase or contract procedures for private benefit.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143-63. (Effective October 1, 1994 — See editor's note) Financial interest of officers in sources of supply; acceptance of bribes.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 3B.

Energy Conservation in Public Facilities.

Part 1. Energy Policy and Life-Cycle Cost Analysis.

§ 143-64.10. Findings; policy.

Editor's Note. —
Session Laws 1993 (Reg. Sess., 1994), c. 775, s. 1, effective July 16, 1994, amended the head of Article 3B, which previously read: "Energy Policy for State Government." Section 1.1 of c. 775 designated §§ 143-64.10 to 143-64.16 as Part 1 of Article 3B, and created the Part head.

§ 143-64.16. Application of Part.

The provisions of this Part shall not apply to municipalities or counties, nor to any agency or department of any municipality or county; provided, however, this Part shall apply to any board of a community college. Community college is defined in G.S. 115D-2(2). (1975, c. 434, s. 5; 1989, c. 23, s. 2; 1993, c. 334, s. 7; 1993 (Reg. Sess., 1994), c. 775, s. 2.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 16, 1994, substituted "Part" for "Article" throughout the section.

Part 2. Guaranteed Energy Savings Contracts for Local Governmental Units.

§ 143-64.17. Definitions.

As used in this Part:

(1) "Energy conservation measure" means a facility alteration or training related to the operation of the facility that reduces energy consumption or operating costs and includes:
  a. Insulation of the building structure and systems within the building;
  b. Storm windows or doors, caulking, weatherstripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed or coated window or door systems, additional glazing, reductions in glass area, or other window or door system modifications that reduce energy consumption;
  c. Automatic energy control systems;
  d. Heating, ventilating, or air-conditioning system modifications or replacements;
  e. Replacement or modification of lighting fixtures to increase the energy efficiency of a lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable State or local building code or is required by the light system after the proposed modifications are made;
  f. Energy recovery systems;
  g. Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings; or
  h. Other energy conservation measures that provide long-term operating cost reductions or significantly reduce energy consumed.

(2) "Energy savings" means a measured reduction in fuel, energy, or operating costs created from the implementation of one or more energy conservation measures when compared with an established baseline of previous fuel, energy, or operating costs developed by the local governmental unit.

(3) "Guaranteed energy savings contract" means a contract for the evaluation, recommendation, or implementation of energy conservation measures, including the design and installation of equipment or the repair or replacement of existing equipment, in which all payments, except obligations on termination of the contract before its expiration, are to be made over time, and in which energy savings are guaranteed to exceed costs. A guaranteed energy savings contract may not require the local governmental unit to purchase a maintenance contract or other maintenance agreement from the qualified provider who installs energy conservation measures under the contract if the local governmental unit uses its own forces for maintenance or if the local governmental unit can purchase maintenance

services at a lower cost from another provider or contractor.

(4) "Local governmental unit" means any board or governing body of a political subdivision of the State, including any board of a community college, any school board, or an agency, commission, or authority of a political subdivision of the State.

(5) "Qualified provider" means a person or business experienced in the design, implementation, and installation of energy conservation measures.

(6) "Request for proposals" means a negotiated procurement initiated by a local governmental unit by way of a published notice that includes the following:

a. The name and address of the local governmental unit.
b. The name, address, title, and telephone number of a contact person in the local governmental unit.
c. Notice indicating that the local governmental unit is requesting qualified providers to propose energy conservation measures through a guaranteed energy savings contract.
d. The date, time, and place where proposals must be received.
e. The evaluation criteria for assessing the proposals.
f. A statement reserving the right of the local governmental unit to reject any or all the proposals.
g. Any other stipulations and clarifications the local governmental unit may require. (1993 (Reg. Sess., 1994), c. 775, s. 3.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 775, s. 11, made this Part effective upon ratification. The Act was ratified July 16, 1994.

§ 143-64.17A. Solicitation of guaranteed energy savings contracts.

(a) Before entering into a guaranteed energy savings contract, a local governmental unit shall issue a request for proposals. Notice of the request shall be published at least 15 days in advance of the time specified for opening of the proposals in at least one newspaper of general circulation in the geographic area for which the local governmental unit is responsible. No guaranteed energy savings contract shall be awarded by any governing body unless at least two proposals have been received from qualified providers. Provided that if after the publication of the notice of the request for proposals, fewer than two proposals have been received from qualified providers, the governing body of the local governmental unit shall again publish notice of the request and if as a result of the second notice, one or more proposals by qualified providers are received, the governing body may then open the proposals and select a qualified provider even if only one proposal is received.

(b) The local governmental unit shall evaluate a sealed proposal from any qualified provider. Proposals shall contain estimates of all costs of installation, modification, or remodeling, including costs of design, engineering, installation, maintenance, repairs, and debt service, and estimates of energy savings.

(c) Proposals received pursuant to this section shall be opened by a member or an employee of the governing body of the local governmental unit at a public opening at which the contents of the proposals shall be announced and recorded in the minutes of the governing body. Proposals shall be evaluated for the local governmental unit by a licensed architect or engineer on the basis of:

(1) The information required in subsection (b) of this section; and

(2) The criteria stated in the request for proposals.

The local governmental unit may require a qualified provider to include in calculating the cost of a proposal for a guaranteed energy savings contract any reasonable fee payable by the local governmental unit for evaluation of the proposal by a licensed architect or professional engineer not employed as a member of the staff of the local governmental unit or the qualified provider.

(d) The local governmental unit shall select the qualified provider that it determines to best meet the needs of the local governmental unit by evaluating the following:

(1) Prices offered;

(2) Proposed costs of construction, financing, maintenance, and training;

(3) Quality of the products proposed;

(4) Amount of energy savings;

(5) General reputation and performance capabilities of the qualified providers;

(6) Substantial conformity with the specifications and other conditions set forth in the request for proposals;

(7) Time specified in the proposals for the performance of the contract; and

(8) Any other factors the local governmental unit deems necessary, which factors shall be made a matter of record.

(e) Nothing in this section shall limit the authority of local governmental units as set forth in Article 3D of this Chapter. (1993 (Reg. Sess., 1994), c. 775, s. 3.)

§ 143-64.17B. Guaranteed energy savings contracts.

(a) A local governmental unit may enter into a guaranteed energy savings contract with a qualified provider if all of the following apply:

(1) The term of the contract does not exceed eight years from the date of the installation and acceptance by the local governmental unit of the energy conservation measures provided for under the contract.

(2) The local governmental unit finds that the energy savings resulting from the performance of the contract will equal or exceed the total cost of the contract.

(3) The energy conservation measures to be installed under the contract are for an existing building.

(b) Before entering into a guaranteed energy savings contract, the local governmental unit shall provide published notice of the meeting at which it proposes to award the contract, the names of the parties to the proposed contract, and the contract's purpose. The notice must be published at least 15 days before the date of the meeting.

(c) A qualified provider entering into a guaranteed energy savings contract under this Part shall provide a bond to the local governmental unit in the amount equal to one hundred percent (100%) of the total cost of the guaranteed energy savings contract to assure the provider's faithful performance. Any bonds required by this subsection shall be subject to the provisions of Article 3 of Chapter 44A of the General Statutes. If the savings resulting from a guaranteed energy savings contract are not as great as projected under the contract, the local governmental unit may terminate the contract without incurring any additional obligation to the qualified provider.

(d) As used in this section, "total cost" shall include, but not be limited to, costs of construction, costs of financing, and costs of maintenance and training during the term of the contract. "Total cost" also includes any obligations on termination of the contract before its expiration. (1993 (Reg. Sess., 1994), c. 775, s. 3.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 775, s. 9 provides that a local governmental unit that enters into a guaranteed energy savings contract must report the contract and the terms of the contract to the Local Government Commission, and that the Commission shall compile the information, including the energy savings expected and realized, and report it biennially to the Joint Legislative Commission on Governmental Operations.

Session Laws 1993 (Reg. Sess., 1994), c. 775, which enacted this Part, in s. 10 provides: "A local governmental unit may not enter into a guaranteed energy savings contract under Part 2 of Article 3B of Chapter 143 of the General Statutes, as enacted by this act, on or after July 1, 1997."

§ 143-64.17C. Installment and lease-purchase contracts.

Units of local government may finance the acquisition, installation, or maintenance of energy conservation measures acquired pursuant to this Part by installment or lease-purchase contracts in accordance with G.S. 160A-20 and G.S. 160A-19. Notwithstanding the provisions of G.S. 160A-20(h), a community college or board of education may enter into an installment contract or a lease-purchase contract for the purpose of financing energy conservation measures acquired pursuant to this Part. A community college or board of education that finances energy conservation measures pursuant to this section, either by an installment contract or a lease-purchase contract, is subject to the conditions and restrictions set out in G.S. 160A-20(a) through (g). (1993 (Reg. Sess., 1994), c. 775, s. 3.)

§ 143-64.17D. Contract continuance.

A guaranteed energy savings contract may extend beyond the fiscal year in which it becomes effective. Such a contract shall stipulate that it does not constitute a debt, liability, or obligation of any local governmental unit or a pledge of the faith and credit of any unit of local government. (1993 (Reg. Sess., 1994), c. 775, s. 3.)

§ 143-64.17E. Payments under contract.

A local governmental unit may use any funds, whether operating or capital, that are not otherwise restricted by law for the payment of a guaranteed energy savings contract. State appropriations to any local governmental unit shall not be reduced as a result of energy savings occurring as a result of a guaranteed energy savings contract. (1993 (Reg. Sess., 1994), c. 775, s. 3.)

§§ 143-64.17F through 143-64.19: Reserved for future codification purposes.

ARTICLE 3C.

Contracts to Obtain Consultant Services.

§ 143-64.20. "Agency" defined; Governor's approval required.

Cross References. — As to the establishment of community penalty programs, see note under § 143-48.

ARTICLE 3D.

Procurement of Architectural, Engineering, and Surveying Services.

§ 143-64.31. Declaration of public policy.

Local Modification. — Currituck: 1993 (Reg. Sess., 1994), c. 668, s. 1 (expires on completion of project or January 1, 2004).

§ 143-64.32. Written exemption of particular contracts.

Local Modification. — Currituck: 1993 (Reg. Sess., 1994), c. 668, s. 1 (expires on completion of project or January 1, 2004).

ARTICLE 6.

Officers of State Institutions.

§ 143-115. (Effective October 1, 1994 — See editor's note) Trustee, director, officer or employee violating law guilty of misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 6A.

Rules of Conduct; Traffic Laws for Institutions.

§ 143-116.6. (See editor's note for date change) Rules concerning conduct; violation.

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c),, provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

The phrase "copies of the ordinances" in the last sentence of subsection (a) of this section, as set out in the main pamphlet, should read "copies of the rules."

ARTICLE 8.

Public Contracts.

§ 143-128. Separate specifications for building contracts; responsible contractors.

Local Modification. — Columbus: 1993 (Reg. Sess., 1994), c. 757, s. 2 (expires December 31, 1995); Currituck: 1993 (Reg. Sess., 1994), c. 668, s. 1 (expires on completion of project or January 1, 2004); Franklin: 1993 (Reg. Sess., 1994), c. 757, s. 1; (As to Art. 8) Mecklenburg: 1993 (Reg. Sess., 1994), c. 573, s. 1; Surry: 1993 (Reg. Sess., 1994), c. 705, s. 1.

Editor's Note. —
As to the exemption of the Office of State Construction of the Department of Administration from the requirements of this section to the extent necessary to expedite delivery of certain prison facilities, see Session Laws 1994, Extra Session, c. 24, s. 67.

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

CASE NOTES

Stated in APAC-Carolina, Inc. v. Greensboro-High Point Airport Auth., 110 N.C. App. 664, 431 S.E.2d 508 (1993).

OPINIONS OF ATTORNEY GENERAL

Constitutionality. — The minority participant provisions in this section, §§ 136-28.4, 160A-17.1, and Session Laws 1989, c. 8, s. 3(b) (Senate Bill 38) appear to be facially constitutional under the principles established by the United States Supreme Court in City of Richmond v. J.A. Croson Company, — U.S. —, 109 S. Ct. 706 (1989), because none of the provisions in question mandate a racial preference which would result in a deprivation of personal rights guaranteed to all persons by the Equal Protection Clause of the Fourteenth Amendment. See opinion of the Attorney General to Rep. Thomas C. Hardaway, Co-Chairman, Sen. Ralph Hunt, Co-Chairman, Legislative Research Commission Committee on Minority Business Contracts and Small Business Assistance, 60 N.C.A.G. 1 (1990).

Separate Prime Rate Contractor System. — Contracts awarded by the State, city, county, or other public body pursuant to the separate prime rate contractor system are not exempt from the "verifiable percentage goal for participation by minority businesses" requirement as set forth in subsection (c) of this section. See opinion of the Attorney General to James K. Polk, Special Asst. to Gov. for Minority Affairs, 60 N.C.A.G. 79 (1991).

The single prime contractor is required to make the good faith effort to recruit and select minority businesses for participation in contracts awarded under subdivision (c)(4) of this section, but the awarding authority is required to adopt written guidelines which should specify actions which must be taken by the separate prime contractors to seek minority participation. See opinion of the Attorney General to James K. Polk, Special Asst. to Gov. for Minority Affairs, 60 N.C.A.G. 79 (1991).

§ 143-129. (Effective October 1, 1994 — See editor's note) Procedure for letting of public contracts; purchases from federal government by State, counties, etc.

Local Modification. — Columbus: 1993 (Reg. Sess., 1994), c. 757, s. 2 (expires December 31, 1995); Currituck: 1993 (Reg. Sess., 1994), c. 668, s. 1 (expires on completion of project or January 1, 2004); Franklin: 1993 (Reg. Sess., 1994), c. 757, s. 1; Mecklenburg: 1993 (Reg. Sess., 1994), c. 709, s. 1; c. 712, 2. 1; Surry: 1993 (Reg. Sess., 1994), c. 705, s. 1.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

As to the exemption of the Office of State Construction of the Department of Administration from the requirements of this section to the extent necessary to expedite delivery of certain prison facilities, see Session Laws 1994, Extra Session, c. 24, s. 67.

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

§ 143-129.1. (Effective October 1, 1994 — See editor's note) Withdrawal of bid.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143-129.4. Guaranteed energy savings contracts.

The solicitation and evaluation of proposals for guaranteed energy savings contracts, as defined in Part 2 of Article 3B of this Chapter, and the letting of contracts for these proposals are governed solely by the provisions of that Part; except that guaranteed energy savings contracts are subject to the requirements of G.S. 143-128(c). (1993 (Reg. Sess., 1994), c. 775, s. 4.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 775, s. 11, made this section effective upon ratification. The Act was ratified July 16, 1994.

Session Laws 1993 (Reg. Sess., 1994), c. 775, which enacted this section, in s. 9 provides that a local governmental unit that enters into a guaranteed energy savings contract must report it to the Local Government Commission.

Session Laws 1993 (Reg. Sess., 1994), c. 775, which enacted this section, in s. 10 provides: "A local governmental unit may not enter into a guaranteed energy savings contract under Part 2 of Article 3B of Chapter 143 of the General Statutes, as enacted by this act, on or after July 1, 1997."

§ 143-131. When counties, cities, towns and other subdivisions may let contracts on informal bids.

Local Modification. — Columbus: Session Laws 1993 (Reg. Sess., 1994), c. 757, s. 2 (expires December 31, 1995); Currituck: Session Laws 1993 (Reg. Sess., 1994), c. 668, s. 1 (expires on completion of project or January 1, 2004); Franklin: Session Laws 1993 (Reg. Sess., 1994), c. 757, s. 1; Surry: Session Laws 1993 (Reg. Sess., 1994), c. 705, s. 1.

Editor's Note. —

As to the exemption of the Office of State Construction of the Department of Administration from the requirements of this section to the extent necessary to expedite delivery of certain prison facilities, see Session Laws 1994, Extra Session, c. 24, s. 67.

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

§ 143-132. Minimum number of bids for public contracts.

Local Modification. — Columbus: Session Laws 1993 (Reg. Sess., 1994), c. 757, s. 2 (expires December 31, 1995); Currituck: Session Laws 1993 (Reg. Sess., 1994), c. 668, s. 1 (expires on completion of project or January 1, 2004); Franklin: Session Laws 1993 (Reg. Sess., 1994), c. 757, s. 1; Surry: Session Laws 1993 (Reg. Sess., 1994), c. 705, s. 1.

Editor's Note. —

As to the exemption of the Office of State Construction of the Department of Administration from the requirements of this section to the extent necessary to expedite delivery of certain prison facilities, see Session Laws 1994, Extra Session, c. 24, s. 67.

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

§ 143-134. Applicable to Department of Transportation and Department of Correction; exceptions.

Editor's Note. —

As to the exemption of the Office of State Construction of the Department of Administration from the requirements of this section to the extent necessary to expedite delivery of certain prison facilities, see Session Laws 1994, Extra Session, c. 24, s. 67.

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

§ 143-135. Limitation of application of Article.

Local Modification. — Watauga: 1993 (Reg. Sess., 1994), c. 667, s. 1; town of Beech Mountain: 1993 (Reg. Sess., 1994), c. 586, s. 1 (expires December 31, 1996); town of Boonvillle: 1993 (Reg. Sess., 1994), c. 667, s. 1.

§ 143-135.3. Adjustment and resolution of State board construction contract claim.

CASE NOTES

Cited in APAC-Carolina, Inc. v. Greensboro-High Point Airport Auth., 110 N.C. App. 664, 431 S.E.2d 508 (1993); State ex rel. State Art Museum Bldg. Comm'n v. Travelers Indem. Co., 111 N.C. App. 330, 432 S.E.2d 419 (1993).

ARTICLE 8B.

State Building Commission.

§ 143-135.26. Powers and duties of the Commission.

Editor's Note. —

Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

As to the exemption of the Office of State Construction of the Department of Administration from the requirements of this section to the extent necessary to expedite delivery of certain prison facilities, see Session Laws 1994, Extra Session, c. 24, s. 67.

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

ARTICLE 9.

Building Code Council and Building Code.

§ 143-138. (See editor's note for date change) North Carolina State Building Code.

Local Modification. — By virtue of Session Laws 1993 (Reg. Sess., 1994), c. 741, the local modification in Mecklenburg should be stricken from the main volume.

Editor's Note. — Fire protection code provisions were adopted by the North Carolina Building Code Council effective July 1, 1991. Therefore, the second version of subsection (e), as set out in the main volume, is now in effect.

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Quoted in City of New Bern v. New Bern-Craven County Bd. of Educ., 113 N.C. App. 98, 437 S.E.2d 655 (1993).

ARTICLE 9A.

North Carolina Manufactured Housing Board — Manufactured Home Warranties.

§ 143-143.14. Notice and hearing.

(a) License suspensions, revocations, and renewal refusals are subject to the provisions of Chapter 150B of the General Statutes.

(b) Within 30 days after receipt of a notification that an application for a license has been denied, the applicant may make a written request for a review by a member of the Department staff designated by the chairman of the Board to determine the reasonableness of the Board's action. The review shall be completed without undue delay, and the applicant shall be notified promptly in writing as to the outcome of the review. Within 30 days after service of the notification as to the outcome, the applicant may make a written request for a hearing under Article 3A of Chapter 150B of the General Statutes if the applicant disagrees with the outcome. (1981, c. 952, s. 2; 1987, c. 429, s. 19; 1993, c. 504, s. 34; 1993 (Reg. Sess., 1994), c. 678, s. 34.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 5, 1994, in subsection (b), substituted "applicant" for "Board" throughout the section, in the first sentence substituted "request" for "demand upon the Board" and inserted "the chairman of," and in the third sentence substituted "request" for "demand upon the Commissioner."

§ 143-143.24. (Effective October 1, 1994 — See editor's note) Engaging in business without license a Class 1 misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 9B.

Uniform Standards Code for Manufactured Homes.

§ 143-151. (See editor's note for date change) Penalties.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 9C.

North Carolina Code Officials Qualification Board.

§ 143-151.15. Return of certificate to Board; reissuance by Board.

A certificate issued by the Board under this Article is valid as long as the person certified is employed by the State of North Carolina or any political subdivision thereof as a Code-enforcement official. When the person certified leaves that employment for any reason, he shall return the certificate to the Board. If the person subsequently obtains employment as a Code-enforcement official in any governmental jurisdiction described above, the Board may reissue the certificate to him. The provisions of G.S. 143-151.16(b) relating to renewal fees and late renewals shall apply, if appropriate. The provisions of G.S. 143-151.16(c) shall not apply. This section does not affect the Board's powers under G.S. 143-151.17. (1977, c. 531, s. 1; 1993 (Reg. Sess., 1994), c. 678, s. 35.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 5, 1994, in the first sentence substituted "under" for "pursuant to" and substituted "is valid as" for "shall remain valid only so"; in the second sentence substituted "that employment" for "such employment"; in the third sentence substituted "may reissue" for "shall reissue"; and in the fifth sentence substituted "This section does not affect the Board's powers under" for "The provisions of this section shall not affect the Board's power to suspend or revoke any certificate pursuant to."

§ 143-151.17. Grounds for disciplinary actions; investigation; administrative procedures.

(a) The Board shall have the power to suspend, revoke or refuse to grant any certificate issued under the provisions of this Article to any person who:

(1) Has been convicted of a felony against this State or the United States, or convicted of a felony in another state that would also be a felony if it had been committed in this State;
(2) Has obtained certification through fraud, deceit, or perjury;
(3) Has knowingly aided or abetted any person practicing contrary to the provisions of this Article or the State Building Code;
(4) Has defrauded the public or attempted to do so;
(5) Has affixed his signature to a report of inspection or other instrument of service if no inspection has been made by him or under his immediate and responsible direction; or,
(6) Has been guilty of willful misconduct, gross negligence or gross incompetence.

(b) The Board may investigate the actions of any qualified Code-enforcement official or applicant upon the verified complaint in writing of any person alleging a violation of subsection (a). The Board may suspend or revoke the certification of any qualified Code-enforcement official and refuse to grant a certificate to any applicant, whom it finds to have been guilty of one or more of the actions set out in subsection (a) as grounds for disciplinary action.

(c) A denial, suspension, or revocation of a certificate issued under this Article shall be made in accordance with Chapter 150B of the General Statutes.

(d) The Board may deny an application for a certificate for any of the grounds that are described in subsection (a) of this section. Within 30 days after receipt of a notification that an application for a certificate has been denied, the applicant may make a written request for a review by a committee designated by the chairman of the Board to determine the reasonableness of the Board's action. The review shall be completed without undue delay, and the applicant shall be notified promptly in writing as to the outcome of the review. Within 30 days after service of the notification as to the outcome, the applicant may make a written request for a hearing under Article 3A of Chapter 150B of the General Statutes if the applicant disagrees with the outcome. (1977, c. 531, s. 1; 1987, c. 827, s. 228; 1993, c. 504, s. 36; 1993 (Reg. Sess., 1994), c. 678, s. 36.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 5, 1994, in subsection (d), in the first sentence, deleted "for suspension, revocation, or refusal to grant" preceding "that are described", in the second and fourth sentences substituted "request" for "demand upon the Board," substituted "committee" for "member of the Department staff" and inserted "the chairman of," and in the third and fourth sentences substituted "applicant" for "Board."

§ 143-151.18. (Effective October 1, 1994 — See editor's note) Violations; penalty; injunction.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Article 9D.

Enforcement of Building Code Insulation and Energy Utilization Standards.

§ 143-151.36. (Effective October 1, 1994 — See editor's note) Penalty.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 9F.

North Carolina Home Inspector Licensure Board.

§ 143-151.43. Short title.

This Article is the Home Inspector Licensure Act and may be cited by that name. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 724, s. 2, made this Article effective upon ratification. The act was ratified July 11, 1994.

§ 143-151.44. Purpose.

This Article safeguards the public health, safety, and welfare and protects the public from being harmed by unqualified persons by regulating the use of the title "Licensed Home Inspector" and by providing for the licensure and regulation of those who perform home inspections for compensation. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.45. Definitions.

The following definitions apply in this Article:

(1) Associate home inspector. — An individual who is employed by a licensed home inspector to conduct a home inspection of a residential building on behalf of the licensed home inspector.

(2) Board. — The North Carolina Home Inspector Licensure Board.

(3) Compensation. — A fee or anything else of value.

(4) Home inspection. — A written evaluation of one or more of the following components of a residential building: heating system, cooling system, plumbing system, electrical system, structural components, foundation, roof, masonry structure, exterior and interior components, or any other related residential housing component.

(5) Home inspector. — An individual who engages in the business of performing home inspections for compensation.

(6) Residential building. — A structure intended to be, or that is in fact, used as a residence by one or more individuals. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.46. North Carolina Home Inspector Licensure Board established; members; terms; vacancies.

(a) Membership. — The North Carolina Home Inspector Licensure Board is established in the Department of Insurance. The Board shall be composed of the Commissioner of Insurance or the Commissioner's designee and seven additional members appointed as follows:

(1) A public member who is not in one of the professional categories in subdivisions (2) through (4) of this subsection,

appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives.

(2) Four home inspectors, two of whom shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one of whom shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, and one of whom shall be appointed by the Governor.

(3) A licensed general contractor appointed by the Governor upon the recommendation of the North Carolina Home Builders Association.

(4) A licensed real estate broker appointed by the Governor upon the recommendation of the North Carolina Association of Realtors.

All members of the Board must be citizens of the State. Appointments by the General Assembly must be made in accordance with G.S. 120-121.

(b) Terms. — The members shall be appointed for staggered terms and the initial appointments shall be made prior to August 1, 1995. The appointees shall hold office until July 1 of the year in which their respective terms expire and until their successors are appointed and qualified.

Of the members initially appointed, the home inspector appointed by the Governor shall serve a one-year term. The home inspector appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives and the licensed real estate broker shall serve two-year terms. One home inspector appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate and the licensed contractor shall serve three-year terms. The remaining home inspector appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate and the citizen of the State shall serve four-year terms.

Thereafter, as the term of each member expires, a successor shall be appointed for a term of four years.

(c) Vacancies. — Vacancies in the Board occurring for any reason shall be filled for the unexpired term by the appointing official making the original appointment. Vacancies in positions appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate or the Speaker of the House of Representatives shall be filled in accordance with G.S. 120-122. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.47. Compensation of Board members.

Members of the Board shall receive no salary for serving on the Board. Members may be reimbursed for their travel and other expenses in accordance with G.S. 93B-5 but may not receive the per diem authorized by that statute. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.48. Election of officers; meetings of Board.

(a) Officers. — Within 30 days after making appointments to the Board, the Governor shall call the first meeting of the Board. The Board shall elect a chair and a vice-chair who shall hold office according to rules adopted by the Board.

(b) Meetings. — The Board shall hold at least two regular meetings each year as provided by rules adopted by the Board. The Board may hold additional meetings upon the call of the chair or any two Board members. A majority of the Board membership constitutes a quorum. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.49. Powers and responsibilities of Board.

(a) General. — The Board has the power to do all of the following:

(1) Determine the qualifications and fitness of applicants for a new or renewed license.

(2) Adopt and publish a code of ethics and standard of practice for persons licensed under this Article.

(3) Issue, renew, deny, revoke, and suspend licenses under this Article.

(4) Conduct investigations, subpoena individuals and records, and do all other things necessary and proper to discipline persons licensed under this Article and to enforce this Article.

(5) Employ professional, clerical, investigative, or special personnel necessary to carry out the provisions of this Article.

(6) Purchase or rent office space, equipment, and supplies necessary to carry out the provisions of this Article.

(7) Adopt a seal by which it shall authenticate its proceedings, official records, and licenses.

(8) Conduct administrative hearings in accordance with Article 3A of Chapter 150B of the General Statutes.

(9) Establish fees as allowed by this Article.

(10) Publish and make available upon request the licensure standards prescribed under this Article and all rules adopted by the Board.

(11) Request and receive the assistance of State educational institutions or other State agencies.

(12) Establish continuing education requirements for persons licensed under this Article.

(13) Adopt rules necessary to implement this Article.

(b) Exam. — In developing a licensing examination to determine the knowledge of an applicant, the Board must emphasize knowledge gained through experience. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.50. License required to perform home inspections for compensation or to claim to be a "licensed home inspector".

(a) Requirement. — To perform a home inspection for compensation on or after October 1, 1996, or to claim to be a licensed home inspector or a licensed associate home inspector on or after that date, an individual must be licensed by the Board. An individual who is not licensed by the Board may perform a home inspection without compensation.

(b) Form of License. — The Board may issue a license only to an individual and may not issue a license to a partnership, an association, a corporation, a firm, or another group. A licensed home inspector or licensed associate home inspector, however, may perform home inspections for or on behalf of a partnership, an association, a corporation, a firm, or another group, may conduct business as one of these entities, and may enter into and enforce contracts as one of these entities. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.51. Requirements to be licensed as a home inspector.

To be licensed as a home inspector, an applicant must do all of the following:

(1) Submit a completed application to the Board upon a form provided by the Board.
(2) Pass a licensing examination prescribed by the Board.
(3) Have minimum net assets or a bond in an amount determined by the Board. The amount may not be less than five thousand dollars ($5,000) nor more than ten thousand dollars ($10,000).
(4) Pay the applicable fees.
(5) Meet one of the following three conditions:
  a. Have a high school diploma or its equivalent, have been engaged as a licensed associate home inspector for at least one year, and have completed 100 home inspections for compensation.
  b. Have education and experience the Board considers to be equivalent to that required by subpart a. of this subdivision.
  c. Be licensed as a general contractor under Article 1 of Chapter 87 of the General Statutes, as an architect under Chapter 83A of the General Statutes, or as a professional engineer under Chapter 89C of the General Statutes. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.52. Requirements to be licensed as an associate home inspector.

To be licensed as an associate home inspector, a person must do all of the following:

(1) Submit a completed application to the Board upon a form provided by the Board.
(2) Pass a licensing examination prescribed by the Board.
(3) Pay the applicable fees.

(4) Have a high school diploma or its equivalent.

(5) Be affiliated or intend to be affiliated with a licensed home inspector and submit a sworn statement by the licensed home inspector with whom the applicant is or intends to be affiliated certifying that the licensed home inspector will actively supervise and train the applicant. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.53. Notification of applicant following evaluation of application.

The Board must review each application for a license submitted to it and must notify each applicant that the application is either accepted or rejected. The Board must send the notification of acceptance or rejection within 30 days of receiving the application. If the Board rejects an application, the notice sent to the applicant must state the reasons for the rejection. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.54. Miscellaneous license provisions.

A license issued by the Board is the property of the Board. If the Board suspends or revokes a license issued by it, the individual to whom it is issued must give it to the Board upon demand. An individual who is licensed by the Board must display the license certificate in the manner prescribed by the Board. A license holder whose address changes must report the change to the Board. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.55. Renewal of license; inactive licenses.

(a) Renewal. — A license expires on September 30 of each year. A license may be renewed by filing an application for renewal with the Board and paying the required renewal fee. The Board must notify license holders at least 30 days before their licenses expire. The Board must renew the license of a person who files an application for renewal, pays the required renewal fee, has fulfilled the continuing education requirements set by the Board, and is not in violation of this Article when the application is filed. If the Board imposes a continuing education requirement as a condition of renewing a license, the Board must ensure that the courses needed to fulfill the requirement are available in all geographic areas of the State.

(b) Late Renewal. — The Board may provide for the late renewal of a license upon the payment of a late fee, but no late renewal of a license may be granted more than five years after the license expires.

(c) Inactive License. — A license holder may apply to the Board to be placed on inactive status. An applicant for inactive status must follow the procedure set by the Board. A license holder who is granted inactive status is not subject to the license renewal requirements during the period the license holder remains on inactive status.

A license holder whose application is granted and is placed on inactive status may apply to the Board to be reinstated to active status at any time. The Board may set conditions for reinstatement to active status. An individual who is on inactive status and applies to be reinstated to active status must comply with the conditions set by the Board. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.56. Suspension, revocation, and refusal to renew license.

(a) The Board may deny or refuse to issue or renew a license, may suspend or revoke a license, or may impose probationary conditions on a license if the license holder or applicant for licensure has engaged in any of the following conduct:

(1) Employed fraud, deceit, or misrepresentation in obtaining or attempting to obtain or renew a license.
(2) Committed an act of malpractice, gross negligence, or incompetence in the practice of home inspections.
(3) Without having a current license, either performed home inspections for compensation or claimed to be licensed.
(4) Engaged in conduct that could result in harm or injury to the public.
(5) Been convicted of or pled guilty or nolo contendere to any crime involving moral turpitude.
(6) Been adjudicated insane or incompetent and has not presented proof of recovery from the condition.
(7) Engaged in any act or practice that violates any of the provisions of this Article or any rule issued by the Board, or aided, abetted, or assisted any person in a violation.

(b) A denial of licensure, refusal to renew, suspension, revocation, or imposition of probationary conditions upon a license holder may be ordered by the Board after a hearing held in accordance with Chapter 150B of the General Statutes and rules adopted by the Board. An application may be made to the Board for reinstatement of a revoked license if the revocation has been in effect for at least one year. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.57. Fees.

(a) Maximum Fees. — The Board may adopt fees that do not exceed the amounts set in the following table for administering this Article:

Item	*Maximum Fee*
Application for home inspector license	$25.00
Application for associate home inspector license	15.00
Home inspector examination	75.00
Issuance of home inspector license	150.00
Issuance of associate home inspector license	100.00
Late renewal of home inspector license	25.00
Late renewal of associate home inspector license inspector	15.00
Copies of Board rules or licensure standards	Cost of printing and mailing.

(b) Subsequent Application. — An individual who applied for a license as a home inspector and who failed the home inspector examination is not required to pay an additional application fee if the individual submits another application for a license as a home inspector. The individual must pay the examination fee, however, to be eligible to take the examination again. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.58. Duties of licensed home inspector or licensed associate home inspector.

A licensed home inspector or licensed associate home inspector must give to each person for whom the inspector performs a home inspection for compensation a written report of the home inspection. The inspector must give the person the report by the date set in a written agreement by the parties to the home inspection. If the parties to the home inspection did not agree on a date in a written agreement, the inspector must give the person the report within three business days after the inspection was performed. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.59. Violation is a misdemeanor.

A person who violates a provision of this Article is guilty of a Class 2 misdemeanor. Each unlawful act or practice constitutes a distinct and separate offense. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.60. Injunctions.

The Board may make application to any appropriate court for an order enjoining violations of this Article. Upon a showing by the Board that any person has violated or is about to violate this Article, the court may grant an injunction or a restraining order or take other appropriate action. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.61. Certain applicants do not have to be licensed as an associate home inspector before being eligible for licensure as a home inspector.

The requirement that an applicant for licensure as a home inspector first have a license as an associate home inspector does not apply to a person who, prior to October 1, 1996, had been engaged in the business of performing home inspections for compensation for at least one year and had conducted at least 100 home inspections for compensation. All other requirements for licensure as a home inspector, including passing a licensing examination provided by the Board, apply to an applicant who is exempted by this section from the requirement of prior licensure as an associate home inspector. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.62. Persons and practices not affected.

This Article does not apply to any of the following:

(1) A person who is employed as a code enforcement official by the State or a political subdivision of the State and is certified pursuant to Article 9C of Chapter 143 of the General Statutes, when acting within the scope of that employment.

(2) A plumbing or heating contractor who does not claim to be a home inspector and is licensed under Article 2 of Chapter 87 of the General Statutes, when acting pursuant to that Article.

(3) An electrical contractor who does not claim to be a home inspector and is licensed under Article 4 of Chapter 87 of the General Statutes, when acting pursuant to that Article.

(4) A real estate broker or a real estate sales representative who does not claim to be a home inspector and is licensed under Article 1 of Chapter 93A of the General Statutes, when acting pursuant to that Article.

(5) A structural pest control licensee licensed under the provisions of Article 4C of Chapter 106 of the General Statutes, an employee of the licensee, or a certified applicator licensed under the provisions of Article 4C of Chapter 106 of the General Statutes who does not claim to be a home inspector, while performing structural pest control activities pursuant to that Article. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

§ 143-151.63. Administration.

(a) The Division of Engineering and Building Code in the Department of Insurance shall provide clerical and other staff services required by the Board, and shall administer and enforce all provisions of this Article and all rules adopted under this Article, subject to the direction of the Board. The Board shall reimburse the Division for its services to the Board.

(b) Any monies received by the Board pursuant to this Article shall be deposited in the State treasury to the account of the Board and shall be used to administer this Article.

(c) The books and records of the Board are subject to the oversight of the State Auditor, as provided in G.S. 93B-4. (1993 (Reg. Sess., 1994), c. 724, s. 1.)

ARTICLE 10.

Various Powers and Regulations.

§ 143-152. (Effective October 1, 1994 — See editor's note) Injury to water supply misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143-153. (Effective October 1, 1994 — See editor's note) Keeping swine near State institutions; penalty.

On the petition of a majority of the legal voters living within a radius of one quarter of a mile of the administrative building of any State educational or charitable institution, it shall be unlawful for any person to keep swine or swine pens within such radius of one quarter of a mile. Any person violating this section shall be guilty of a Class 3 misdemeanor and shall be subject to only a fine of not less than ten dollars ($10.00) nor more than fifty dollars ($50.00). (1909, c. 706; C.S., s. 7527; 1993, c. 539, s. 1015; 1994, Ex. Sess., c. 14, s. 62; c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1994, Extra Session, c. 14, s. 73 provides: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

The 1994 Extra Session amendment, by c. 14, s. 62, effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date, substituted "be subject to only a fine" for "only be subject to a fine" in the last sentence.

ARTICLE 12D.

Separation Allowances for Law-Enforcement Officers.

§ 143-166.41. Special separation allowance.

CASE NOTES

Cited in Bowers v. City of High Point, 110 N.C. App. 862, 431 S.E.2d 219 (1993).

§ 143-166.42. Special separation allowances for local officers.

CASE NOTES

Authority of Assistant City Manager to set Allowance. — Assistant City Manager had the authority to enter into a contract fixing the rate of the "special separation allowance" under this section; the assistant city manager's promise of benefits to plaintiffs was therefore a binding contract on the city. Bowers v. City of High Point, 110 N.C. App. 862, 431 S.E.2d 219, cert. granted, 334 N.C. 619, 435 S.E.2d 333 (1993).

ARTICLE 21.

Water and Air Resources.

Part 1. Organization and Powers Generally; Control of Pollution.

§ 143-211. Declaration of public policy.

CASE NOTES

Common-Law Actions of Nuisance and Continuing Trespass Not Preempted. —

The very complex and comprehensive set of regulatory requirements and controls established under the pertinent provisions of Chapter 143 of the General Statutes are clearly distinguishable from the parameters of a private nuisance as that term was understood under common law. State ex rel. Cobey v. Ballard, 110 N.C. App. 486, 429 S.E.2d 735 (1993).

The case at bar should have been characterized as an action in nuisance, thus qualifying it as a cause of action which existed at the adoption of our State's 1868 Constitution and satisfying the first prong of the test in State ex rel. Rhodes v. Simpson, 325 N.C. 514, 385 S.E.2d 329 (1989). State ex rel. Cobey v. Ballard, 110 N.C. App. 486, 429 S.E.2d 735 (1993).

§ 143-214.2A. (See editor's note for date change) Prohibited disposal of medical waste.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143-214.4. (See editor's note for date change) Certain cleaning agents containing phosphorus prohibited.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143-215.1. Control of sources of water pollution; permits required.

CASE NOTES

Testimony of Director of Division of Environmental Management concerning harm to the regulatory process and community was competent evidence to support the findings of the N.C. Environmental Management Commission imposing civil penalty for violations of subdivision (a)(2) of this section. Chesapeake Microfilm, Inc. v. North Carolina Dep't of Env't., Health & Natural Resources, 111 N.C. App. 737, 434 S.E.2d 218 (1993).

Cited in Empire Power Co. v. North Carolina Dep't of Env't, Health & Natural Resources, 112 N.C. App. 566, 436 S.E.2d 594 (1993).

§ 143-215.3. General powers of Commission and Department; auxiliary powers.

(a) Additional Powers. — In addition to the specific powers prescribed elsewhere in this Article, and for the purpose of carrying out its duties, the Commission shall have the power:

(1) To make rules implementing Articles 21, 21A, 21B, or 38 of this Chapter.

(1a) To charge fees for the following:

a. Processing of applications for permits or registrations issued under Articles 21, 21A, 21B, and 38 of this Chapter;

b. Administering permits or registrations issued under Articles 21, 21A, 21B, or 38 of this Chapter including monitoring compliance with the terms of those permits; and

c. Reviewing, processing, and publicizing applications for construction grant awards under the Federal Water Pollution Control Act.

No fee may be charged under this provision, however, to a farmer who submits an application that pertains to his farming operations.

(1b) The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing of an application for a permit under G.S. 143-215.1 of Article 21 and G.S. 143-215.108 and G.S. 143-215.109 of Article 21B of this Chapter may not exceed four hundred dollars ($400.00). The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing a registration under Part 2A of this Article or Article 38 of this Chapter may not exceed fifty dollars ($50.00) for any single registration. An additional fee of twenty percent (20%) of the registration processing fee may be assessed for a late registration under Article 38 of this Chapter. The fee for administering and compliance monitoring under G.S. 143-215.1 of Article 21 and G.S. 143-215.108 and G.S. 143-215.109 of Article 21B shall be charged on an annual basis for each year of the permit term and may not exceed one thousand five hundred dollars ($1,500) per year. Fees for processing all permits under Article 21A and all other sections of Articles 21 and 21B shall not exceed one hundred dollars ($100.00) for any single permit. Notwithstanding any other provision of this subdivision, the total payment for fees required for all permits under this subsection for any single facility shall not exceed seven thousand five hundred dollars ($7,500) per year, which amount shall include all application fees and fees for administration and compliance monitoring. A single facility is defined to be any contiguous area under one ownership and in which permitted activities occur. For all permits issued under these Articles where a fee schedule is not specified in the statutes, the Commission, or other commission specified by statute shall adopt a fee schedule in a rule following the procedures established by the Administrative Procedure Act. Such fee schedules shall be established to reflect the size of the emission or discharge, the potential impact on the environment, the staff costs involved, relative costs of the issuance of new permits and the reissuance of existing permits, and shall include adequate safeguards to prevent unusual fee assessments which would result in serious economic burden on an individual applicant. A system shall be considered to allow consolidated annual payments for persons with multiple permits. In its rulemaking to establish fee schedules, the Commission is also directed to consider a method of rewarding facilities which achieve full compliance with administrative and self-monitoring reporting requirements, and to consider, in those cases where the cost of renewal or amendment of a permit is less than for the original permit, a lower fee for such renewal or amendment.

(1c) Moneys collected pursuant to G.S. 143-215.3(a)(1a) shall be used to:
  a. Eliminate, insofar as possible, backlogs of permit applications awaiting agency action;
  b. Improve the quality of permits issued;
  c. Improve the rate of compliance of permitted activities with environmental standards; and
  d. Decrease the length of the processing period for permit applications.

(1d) The Commission may adopt and implement a graduated fee schedule sufficient to cover all direct and indirect costs required for the State to develop and administer a permit program which meets the requirements of Title V. The provisions of subdivision (1b) of this subsection do not apply to the adoption of a fee schedule under this subdivision. In adopting and implementing a fee schedule, the Commission shall require that the owner or operator of all air contaminant sources subject to the requirement to obtain a permit under Title V to pay an annual fee, or the equivalent over some other period, sufficient to cover costs as provided in section 502(b)(3)(A) of Title V. The fee schedule shall be adopted according to the procedures set out in Chapter 150B of the General Statutes.

a. The total amount of fees collected under the fee schedule adopted pursuant to this subdivision shall conform to the requirements of section 502(b)(3)(B) of Title V. No fee shall be collected for more than 4,000 tons per year of any individual regulated pollutant, as defined in section 502(b)(3)(B)(ii) of Title V, emitted by any source. Fees collected pursuant to this subdivision shall be credited to the Title V Account.

b. The Commission may reduce any permit fee required under this section to take into account the financial resources of small business stationary sources as defined under Title V and regulations promulgated by the United States Environmental Protection Agency.

c. When funds in the Title V Account exceed the total amount necessary to cover the cost of the Title V program for the next fiscal year, the Secretary shall reduce the amount billed for the next fiscal year so that the excess funds are used to supplement the cost of administering the Title V permit program in that fiscal year.

(2) To direct that such investigation be conducted as it may reasonably deem necessary to carry out its duties as prescribed by this Article or Article 21A or Article 21B of this Chapter, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating the condition of any waters and the discharge therein of any sewage, industrial waste, or other waste or for the purpose of investigating the condition of the air, air pollution, air contaminant sources, emissions, or the installation and operation of any air-cleaning devices, and to require written statements or the filing of reports under oath, with respect to pertinent questions relating to the operation of any air-cleaning device, sewer system, disposal system, or treatment works. In the case of effluent or emission data, any records, reports, or information obtained under this Article or Article 21A or Article 21B of this Chapter shall be related to any applicable effluent or emission limitations or toxic, pretreatment, or new source performance standards. No person shall refuse entry or access to any authorized representative of the Commission or Department who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.

(3) To conduct public hearings and to delegate the power to conduct public hearings in accordance with the procedures prescribed by this Article or by Article 21B of this Chapter.

(4) To delegate such of the powers of the Commission as the Commission deems necessary to one or more of its members, to the Secretary or any other qualified employee of the Department; provided, that the provisions of any such delegation of power shall be set forth in the rules of the Commission; and provided further that the Commission shall not delegate to persons other than its own members and the designated employees of the Department the power to conduct hearings with respect to the classification of waters, the assignment of classifications, air quality standards, air contaminant source classifications, emission control standards, or the issuance of any special order except in the case of an emergency under subdivision (12) of this subsection for the abatement of existing water or air pollution. Any employee of the Department to whom a delegation of power is made to conduct a hearing shall report the hearing with its evidence and record to the Commission.

(5) To institute such actions in the superior court of any county in which a violation of this Article, Article 21B of this Chapter, or the rules of the Commission has occurred, or, in the discretion of the Commission, in the superior court of the county in which any defendant resides, or has his or its principal place of business, as the Commission may deem necessary for the enforcement of any of the provisions of this Article, Article 21B of this Chapter, or of any official action of the Commission, including proceedings to enforce subpoenas or for the punishment of contempt of the Commission.

(6) To agree upon or enter into any settlements or compromises of any actions and to prosecute any appeals or other proceedings.

(7) To direct the investigation of any killing of fish and wildlife which, in the opinion of the Commission, is of sufficient magnitude to justify investigation and is known or believed to have resulted from the pollution of the waters or air as defined in this Article, and whenever any person, whether or not he shall have been issued a certificate of approval, permit or other document of approval authorized by this or any other State law, has negligently, or carelessly or unlawfully, or willfully and unlawfully, caused pollution of the waters or air as defined in this Article, in such quantity, concentration or manner that fish or wildlife are killed as the result thereof, the Commission, may recover, in the name of the State, damages from such person. The measure of damages shall be the amount determined by the Department and the North Carolina Wildlife Resources Commission, whichever has jurisdiction over the fish and wildlife destroyed to be the replacement cost thereof plus the cost of all reasonable and necessary investigations made or caused to be made by the State in connection therewith. Upon receipt of the estimate of damages caused, the Department shall notify the persons responsible for the destruction of the fish or wildlife in question and may effect such settlement as the Commission may deem proper and reasonable, and if no settlement is

reached within a reasonable time, the Commission shall bring a civil action to recover such damages in the superior court in the county in which the discharge took place. Upon such action being brought the superior court shall have jurisdiction to hear and determine all issues or questions of law or fact, arising on the pleadings, including issues of liability and the amount of damages. On such hearing, the estimate of the replacement costs of the fish or wildlife destroyed shall be prima facie evidence of the actual replacement costs of such fish or wildlife. In arriving at such estimate, any reasonably accurate method may be used and it shall not be necessary for any agent of the Wildlife Resources Commission or the Department to collect, handle or weigh numerous specimens of dead fish or wildlife.

The State of North Carolina shall be deemed the owner of the fish or wildlife killed and all actions for recovery shall be brought by the Commission on behalf of the State as the owner of the fish or wildlife. The fact that the person or persons alleged to be responsible for the pollution which killed the fish or wildlife holds or has held a certificate of approval, permit or other document of approval authorized by this Article or any other law of the State shall not bar any such action. The proceeds of any recovery, less the cost of investigation, shall be used to replace, insofar as and as promptly as possible, the fish and wildlife killed, or in cases where replacement is not practicable, the proceeds shall be used in whatever manner the responsible agency deems proper for improving the fish and wildlife habitat in question. Any such funds received are hereby appropriated for these designated purposes. Nothing in this paragraph shall be construed in any way to limit or prevent any other action which is now authorized by this Article.

(8) After issuance of an appropriate order, to withhold the granting of any permit or permits pursuant to G.S. 143-215.1 or G.S. 143-215.108 for the construction or operation of any new or additional disposal system or systems or air-cleaning device or devices in any area of the State. Such order may be issued only upon determination by the Commission, after public hearing, that the permitting of any new or additional source or sources of water or air pollution will result in a generalized condition of water or air pollution within the area contrary to the public interest, detrimental to the public health, safety, and welfare, and contrary to the policy and intent declared in this Article or Article 21B of this Chapter. The Commission may make reasonable distinctions among the various sources of water and air pollution and may direct that its order shall apply only to those sources which it determines will result in a generalized condition of water or air pollution.

The determination of the Commission shall be supported by detailed findings of fact and conclusions set forth in the order and based upon competent evidence of record. The order shall describe the geographical area of the State affected thereby with particularity and shall prohibit the issuance of permits pending a determination by the Commission that the generalized condition of water or air pollution has ceased.

Notice of hearing shall be given in accordance with the provisions of G.S. 150B-21.2.

A person aggrieved by an order of the Commission under this subdivision may seek judicial review of the order under Article 4 of Chapter 150B of the General Statutes without first commencing a contested case. An order may not be stayed while it is being reviewed.

(9) If an investigation conducted pursuant to this Article or Article 21B of this Chapter reveals a violation of any rules, standards, or limitations adopted by the Commission pursuant to this Article or Article 21B of this Chapter, or a violation of any terms or conditions of any permit issued pursuant to G.S. 143-215.1 or 143-215.108, or special order or other document issued pursuant to G.S. 143-215.2 or G.S. 143-215.110, the Commission may assess the reasonable costs of any investigation, inspection or monitoring survey which revealed the violation against the person responsible therefor. If the violation resulted in an unauthorized discharge to the waters or atmosphere of the State, the Commission may also assess the person responsible for the violation for any actual and necessary costs incurred by the State in removing, correcting or abating any adverse effects upon the water or air resulting from the unauthorized discharge. If the person responsible for the violation refuses or fails within a reasonable time to pay any sums assessed, the Commission may institute a civil action in the superior court of the county in which the violation occurred or, in the Commission's discretion, in the superior court of the county in which such person resides or has his or its principal place of business, to recover such sums.

(10) To require a laboratory facility that performs any tests, analyses, measurements, or monitoring required under this Article or Article 21B of this Chapter to be certified annually by the Department, to establish standards that a laboratory facility and its employees must meet and maintain in order for the laboratory facility to be certified, and to charge a laboratory facility a fee for certification. Fees collected under this subdivision shall be credited to the Water and Air Account and used to administer this subdivision. These fees shall be applied to the cost of certifying commercial, industrial, and municipal laboratory facilities.

(11) Repealed by Session Laws 1983, c. 296, s. 6.

(12) To declare an emergency when it finds that a generalized condition of water or air pollution which is causing imminent danger to the health or safety of the public. Regardless of any other provisions of law, if the Department finds that such a condition of water or air pollution exists and that it creates an emergency requiring immediate action to protect the public health and safety or to protect fish and wildlife, the Secretary of the Department with the concurrence of the Governor, shall order persons causing or contributing to the water or air pollution in question to reduce or discontinue immediately the emission of air contami-

nants or the discharge of wastes. Immediately after the issuance of such order, the chairman of the Commission shall fix a place and time for a hearing before the Commission to be held within 24 hours after issuance of such order, and within 24 hours after the commencement of such hearing, and without adjournment thereof, the Commission shall either affirm, modify or set aside the order.

In the absence of a generalized condition of air or water pollution of the type referred to above, if the Secretary finds that the emissions from one or more air contaminant sources or the discharge of wastes from one or more sources of water pollution is causing imminent danger to human health and safety or to fish and wildlife, he may with the concurrence of the Governor order the person or persons responsible for the operation or operations in question to immediately reduce or discontinue the emissions of air contaminants or the discharge of wastes or to take such other measures as are, in his judgment, necessary, without regard to any other provisions of this Article or Article 21B of this Chapter. In such event, the requirements for hearing and affirmance, modification or setting aside of such orders set forth in the preceding paragraph of this subdivision shall apply.

(13) Repealed by Session Laws 1983, c. 296, s. 6.

(14) To certify and approve, by appropriate delegations and conditions in permits required by G.S. 143-215.1, requests by publicly owned treatment works to implement, administer and enforce a pretreatment program for the control of pollutants which pass through or interfere with treatment processes in such treatment works; and to require such programs to be developed where necessary to comply with the Federal Water Pollution Control Act and the Resource Conservation and Recovery Act, including the addition of conditions and compliance schedules in permits required by G.S. 143-215.1. Pretreatment programs submitted by publicly owned treatment works shall include, at a minimum, the adoption of pretreatment standards, a permit or equally effective system for the control of pollutants contributed to the treatment works, and the ability to effectively enforce compliance with the program.

(15) To adopt rules for the prevention of pollution from underground tanks containing petroleum, petroleum products, or hazardous substances. Rules adopted under this section may incorporate standards and restrictions which exceed and are more comprehensive than comparable federal regulations.

(16) To adopt rules limiting the manufacture, storage, sale, distribution or use of cleaning agents containing phosphorus pursuant to G.S. 143-214.4(e), and to adopt rules limiting the manufacture, storage, sale, distribution or use of cleaning agents containing nitrilotriacetic acid.

(17) To adopt rules to implement Part 2A of Article 21A of Chapter 143.

(b) Research Functions. — The Department shall have the power to conduct scientific experiments, research, and investigations to discover economical and practical corrective methods for air pollution and waste disposal problems. To this end, the Department may cooperate with any public or private agency or agencies in the conduct of such experiments, research, and investigations, and may, when funds permit, establish research studies in any North Carolina educational institution, with the consent of such institution. In addition, the Department shall have the power to cooperate and enter into contracts with technical divisions of State agencies, institutions and with municipalities, industries, and other persons in the execution of such surveys, studies, and research as it may deem necessary in fulfilling its functions under this Article or Article 21B of this Chapter. All State departments shall advise with and cooperate with the Department on matters of mutual interest.

(c) Relation with the Federal Government. — The Commission as official water and air pollution control agency for the State is delegated to act in local administration of all matters covered by any existing federal statutes and future legislation by Congress relating to water and air quality control. In order for the State of North Carolina to effectively participate in programs administered by federal agencies for the regulation and abatement of water and air pollution, the Department is authorized to accept and administer funds provided by federal agencies for water and air pollution programs and to enter into contracts with federal agencies regarding the use of such funds.

(d) Relations with Other States. — The Commission or the Department may, with the approval of the Governor, consult with qualified representatives of adjoining states relative to the establishment of regulations for the protection of waters and air of mutual interest, but the approval of the General Assembly shall be required to make any regulations binding.

(e) Variances. — Any person subject to the provisions of G.S. 143-215.1 or 143-215.108 may apply to the Commission for a variance from rules, standards, or limitations established pursuant to G.S. 143-214.1, 143-215, or 143-215.107. The Commission may grant such variance, for fixed or indefinite periods after public hearing on due notice, or where it is found that circumstances so require, for a period not to exceed 90 days without prior hearing and notice. Prior to granting a variance hereunder, the Commission shall find that:

(1) The discharge of waste or the emission of air contaminants occurring or proposed to occur do not endanger human health or safety; and

(2) Compliance with the rules, standards, or limitations from which variance is sought cannot be achieved by application of best available technology found to be economically reasonable at the time of application for such variances, and would produce serious hardship without equal or greater benefits to the public, provided that such variances shall be consistent with the provisions of the Federal Water Pollution Control Act as amended or the Clean Air Act as amended; and provided further, that any person who would otherwise be entitled to a variance or modification under the Federal Water Pollution Control Act as amended or the Clean Air Act as amended shall also be entitled to the same variance from or modification in rules, standards, or limitations established pursuant to G.S. 143-214.1, 143-215, and 143-215.107, respectively. (1951, c. 606; 1957,

c. 1267, s. 3; 1959, c. 779, s. 8; 1963, c. 1086; 1967, c. 892, s. 1; 1969, c. 538; 1971, c. 1167, ss. 7, 8; 1973, c. 698, ss. 1-7, 9, 17; c. 712, s. 1; c. 1262, ss. 23, 86; c. 1331, s. 3; 1975, c. 583, ss. 5, 6; c. 655, s. 3; 1977, c. 771, s. 4; 1979, c. 633, ss. 6-8; 1979, 2nd Sess., c. 1158, ss. 1, 3, 4; 1983, c. 296, ss. 5-8; 1985, c. 551, s. 2; 1987, c. 111, s. 2; c. 767, s. 1; c. 827, ss. 1, 154, 161, 266; 1987 (Reg. Sess., 1988), c. 1035, s. 2; 1989, c. 500, s. 122; c. 652, s. 1; 1991, c. 552, ss. 2, 11; c. 712, s. 2; 1991 (Reg. Sess., 1992), c. 890, s. 16; c. 1039, ss. 14, 20.1; 1993, c. 344, s. 2; c. 400, ss. 1(c), 2, 3, 15; c. 496, s. 4; 1993 (Reg. Sess., 1994), c. 694, s. 1.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 6, 1994, rewrote subdivision (a)(2).

§ 143-215.3C. Confidential information protected.

(a) Information obtained under this Article or Article 21A or 21B of this Chapter shall be available to the public except that, upon a showing satisfactory to the Commission by any person that information to which the Commission has access, if made public, would divulge methods or processes entitled to protection as trade secrets pursuant to G.S. 132-1.2, the Commission shall consider the information confidential.

(b) Effluent data, as defined in 40 Code of Federal Regulations § 2.302 (1 July 1993 Edition) and emission data, as defined in 40 Code of Federal Regulations § 2.301 (1 July 1993 Edition) is not entitled to confidential treatment under this section.

(c) Confidential information may be disclosed to any officer, employee, or authorized representative of any federal or state agency if disclosure is necessary to carry out a proper function of the Department or other agency or when relevant in any proceeding under this Article or Article 21A or Article 21B of this Chapter.

(d) The Commission shall provide for adequate notice to any person who submits information of any decision that the information is not entitled to confidential treatment and of any decision to release information that the person who submits the information contends is entitled to confidential treatment. Any person who requests information and any person who submits information who is dissatisfied with a decision of the Commission to withhold or release information may request a declaratory ruling from the Commission under G.S. 150B-4 within 10 days after the Commission notifies the person of its decision. The information may not be released by the Commission until the Commission issues a declaratory ruling or, if judicial review of the final agency decision is sought by any party, the information may not be released by the Commission until a final judicial determination has been made. (1993 (Reg. Sess., 1994), c. 694, s. 2.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 694, s. 3, made this section effective upon ratification. The act was ratified July 6, 1994.

The introductory language of Session Laws 1993 (Reg. Sess., 1994), c. 694, s. 2 read: "Part 1 of Article 21 of Chapter 143 of the General Statutes reads as rewritten." Section 2 then sets out this section.

§ 143-215.6A. Enforcement procedures: civil penalties.

CASE NOTES

Cited in House of Raeford Farms, Inc. v. City of Raeford, 112 N.C. App. 522, 435 S.E.2d 829 (1993).

§ 143-215.6B. (See editor's note for date change) Enforcement procedures: criminal penalties.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 2. Regulation of Use of Water Resources.

§ 143-215.17. (See editor's note for date change) Enforcement procedures.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 3. Dam Safety Law.

§ 143-215.36. (See editor's note for date change) Enforcement procedures.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 6. Floodway Regulation.

§ 143-215.58. (See editor's note for date change) Violations and penalties.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 7. Water and Air Quality Reporting.

§ 143-215.69. (See editor's note for date change) Enforcement procedures.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 9. Nonpoint Source Pollution Control Program.

§ 143-215.74. Agriculture cost share program.

Editor's Note. —

Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

ARTICLE 21A.

Oil Pollution and Hazardous Substances Control.

Part 1. General Provisions.

§ 143-215.75. Title.

CASE NOTES

Strict Liability Claim Not Preempted. — Developer's strict liability claim based on migration of methane gases from city landfill based on the North Carolina Oil Pollution and Hazardous Substances Control Act of 1978 was not preempted by the inverse condemnation provision (§ 40A-51). Ashley Park Charlotte Assoc. v. City of Charlotte, 827 F. Supp. 1223 (W.D.N.C. 1993).

Cited in State ex rel. Cobey v. Ballard, 110 N.C. App. 486, 429 S.E.2d 735 (1993); Ammons v. Wysong & Miles Co., 110 N.C. App. 739, 431 S.E.2d 524 (1993).

§ 143-215.76. Purpose.

CASE NOTES

Cited in Ashley Park Charlotte Assoc. v. City of Charlotte, 827 F. Supp. 1223 (W.D.N.C. 1993).

Part 2. Oil Discharge Controls.

§ 143-215.88B. (See editor's note for date change) Enforcement procedures: criminal penalties.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143-215.93. Liability for damage caused.

CASE NOTES

Liability Not Shown. — Appellants failed to show that the potential sources of contamination from defendant's property caused them damage such that strict liability under the Oil Pollution and Hazardous Substances Control Act did not obtain. Ammons v. Wysong & Miles Co., 110 N.C. App. 739, 431 S.E.2d 524, cert. denied, 334 N.C. 619, 435 S.E.2d 332 (1993).

Cited in Ashley Park Charlotte Assoc. v. City of Charlotte, 827 F. Supp. 1223 (W.D.N.C. 1993).

Part 3. Oil Terminal Facilities.

§ 143-215.98. (Effective October 1, 1994 — See editor's note) Violations.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 4. Oil Refining Facility Permits.

§ 143-215.102. (See editor's note for date change) Penalties.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 21B.

Air Pollution Control.

§ 143-215.107. Air quality standards and classifications.

(a) Duty to Adopt Plans, Standards, etc. — The Commission is hereby directed and empowered, as rapidly as possible within the limits of funds and facilities available to it, and subject to the procedural requirements of this Article and Article 21:

(1) To prepare and develop, after proper study, a comprehensive plan or plans for the prevention, abatement and control of air pollution in the State or in any designated area of the State.

(2) To determine by means of field sampling and other studies, including the examination of available data collected by any local, State or federal agency or any person, the degree of air contamination and air pollution in the State and the several areas of the State.

(3) To develop and adopt, after proper study, air quality standards applicable to the State as a whole or to any designated area of the State as the Commission deems proper in order to promote the policies and purposes of this Article and Article 21 most effectively.

(4) To collect information or to require reporting from classes of sources which, in the judgment of the Environmental Management Commission, may cause or contribute to air pollution. Any person operating or responsible for the operation of air contaminant sources of any class for which the Commission requires reporting shall make reports containing such information as may be required by the Commission concerning location, size, and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of emissions, and such other information as is relevant to air pollution and available or reasonably capable of being assembled.

(5) To develop and adopt emission control standards as in the judgment of the Commission may be necessary to prohibit, abate, or control air pollution commensurate with established air quality standards. The standards may be applied uniformly to the State as a whole or to any area of the

State designated by the Commission. This subdivision does not apply to asbestos NESHAP for renovations and demolitions, defined in G.S. 130A-444, that are subject to regulation by the Commission for Health Services under Article 19 of Chapter 130A of the General Statutes.

(6) To adopt, when necessary and practicable, a program for testing emissions from motor vehicles and to adopt motor vehicle emission standards in compliance with applicable federal regulations.

(7) To develop and adopt standards and plans necessary to implement programs for the prevention of significant deterioration and for the attainment of air quality standards in nonattainment areas.

(8) To develop and adopt standards and plans necessary to implement programs to control acid deposition and to regulate the use of sulfur dioxide allowances and nitrogen oxides emissions in accordance with Title IV and implementing regulations adopted by the United States Environmental Protection Agency.

(9) To regulate the oxygen content of gasoline, to require use of reformulated gasoline as the Commission determines necessary, to implement the requirements of Title II and implementing regulations adopted by the United States Environmental Protection Agency, and to develop standards and plans to implement this subdivision. Rules adopted under this subdivision may specify standards for a particular area of the State that differ from standards specified for other areas as may be necessary to improve ambient air quality within a particular area, achieve attainment or preclude violations of the National Ambient Air Quality Standards, or to meet other federal requirements. Rules may authorize the use of marketable oxygen credits for gasoline as provided in federal requirements.

(10) To develop and adopt standards and plans necessary to implement requirements of the federal Clean Air Act and implementing regulations adopted by the United States Environmental Protection Agency.

(b) Criteria for Standards. — In developing air quality and emission control standards, the Commission shall recognize varying local conditions and requirements and may prescribe different standards for different areas as may be necessary and appropriate to facilitate accomplishment of the stated purposes of this Article and Article 21.

(c) Chapter 150B of the General Statutes governs the adoption and publication of rules under this Article.

(d), (e) Repealed by Session Laws 1987, c. 827, s. 205.

(f)(1) Emission control standards adopted by the Commission pursuant to this Article or Article 21, or by any other State or local regulatory body shall be no more restrictive and no more stringent than necessary to comply with federal requirements unless the Commission first considers, among other things, an evaluation of the impact of the proposed emission control standards and finds that the benefits of such proposed emission control standards justify their costs.

(2) The Department shall prepare and submit into the record of the rule-making hearing an evaluation, prepared by the Department in accordance with this subsection, of such proposed standards. The study shall include an estimate of the economic and social costs to commerce and industry, units of local government, and agriculture to comply with the proposed standards and an examination of their environmental, public health, safety, and welfare benefits. The evaluation shall present relevant data, assumptions, analysis, and calculations in sufficient detail to allow the agency and any reviewing person or entity to understand the information presented. The evaluation shall be as extensive as is practicable, in the judgment of the agency, taking into account the time and resources available to the agency and the other duties which the agency is required to carry out.

(3) In preparing the evaluation required by this subsection, the Department may call upon any agency of the State government, the Agricultural Extension Service, the institutions of The University of North Carolina, and private contractors regarding the acquisition and analysis of data necessary to prepare the evaluation required by this subsection.

(4) The evaluation required by this subsection shall take into account the uncertainties associated with the estimation of benefits and costs and the difficulties involved in the comparison of qualitatively and quantitatively dissimilar benefits and costs. Benefits and costs which cannot be quantified may be expressed in qualitative terms.

(5) This subsection shall not be interpreted to require a numerical cost-benefit analysis nor to require an evaluation that is inconsistent with federal law or regulation. Nothing in this subsection shall be construed to either alter the basis on which a standard or rule is promulgated or preclude an agency from carrying out its responsibility to protect public health and welfare. Nothing in this subsection shall be construed to require that an evaluation be prepared if the time required for its preparation would cause the Commission to be unable to adopt rules in accordance with time deadlines established by the Congress of the United States or by the United States Environmental Protection Agency. Limits and conditions to protect air quality standards that are included in permits issued under this Article are not subject to the requirements of this subsection.

(6) In any judicial review of the rule that is the subject of the study, the entry into the record before the court of the finding as to such impacts by the Commission creates a rebuttable presumption that the environmental, public health, safety, and welfare benefits from the proposed emission control standards exceed their social and economic costs. To overcome the presumption, persons challenging the rule must present clear and convincing evidence that the benefits of the agency rule do not justify the costs.

(7) This subsection does not require that an evaluation be prepared for any rule for which there is no comparable federal emission control standard.

(g) The Commission may adopt rules applicable to any facility that is sited or operated pursuant to Chapter 130B of the General Statutes that incorporate standards that exceed and are more comprehensive than comparable federal regulations. The procedures set out in subsection (f) of this section do not apply to the adoption of such rules. (1973, c. 821, s. 6; c. 1262, s. 23; 1975, c. 784; 1979, c. 545, s. 1; c. 931; 1987, c. 827, ss. 154, 205; 1989, c. 132; c. 168, s. 48; 1991, c. 403, s. 3; c. 552, s. 9; c. 761, s. 40; 1991 (Reg. Sess., 1992), c. 889, s. 3; 1993, c. 400, s. 7; 1993 (Reg. Sess., 1994), c. 686, s. 6.)

Effect of Amendments. —

The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, and applicable to violations occurring on or after that date, in subdivision (a)(5) deleted "such" preceding "emission control," substituted "abate," for "abate", substituted "The" for "Such" in the second sentence, and added the last sentence.

§ 143-215.108. Control of sources of air pollution; permits required.

CASE NOTES

Third Parties' Right to Contested Case Hearing. — Third parties may not seek a contested case hearing under subsection (e) of this section to challenge the issuance of an air quality permit by the Department of Environment, Health and Natural Resources. Empire Power Co. v. North Carolina Dep't of Env't, Health & Natural Resources, 112 N.C. App. 566, 436 S.E.2d 594 (1993).

Timeliness of Challenge to Commission Decision. — Where power company did not file a petition challenging the decision of the Department of Environment, Health and Natural Resources (DEHNR) within 30 days after DEHNR notified it of the permitting decision, the permitting decision was final. Empire Power Co. v. North Carolina Dep't of Env't, Health & Natural Resources, 112 N.C. App. 566, 436 S.E.2d 594 (1993).

Commission's Decision Not Subject to Review. — The language "not subject to review" means the permit applicant or permittee may seek neither a contested case hearing under subsection (e) of this section nor judicial review under § 150B-43 if the permittee or permit applicant has not filed a petition within 30 days of notification of the agency's decision; but this language does not prohibit judicial review of a final agency decision in a contested case by an aggrieved third party where the permit or permit applicant has not challenged the agency decision. Empire Power Co. v. North Carolina Dep't of Env't, Health & Natural Resources, 112 N.C. App. 566, 436 S.E.2d 594 (1993).

§ 143-215.114B. (See editor's note for date change) Enforcement procedures: criminal penalties.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 24.

Wildlife Resources Commission.

§ 143-240. Creation of Wildlife Resources Commission; districts; qualifications of members.

(a) There is hereby created the Wildlife Resources Commission of the Department of Environment, Health, and Natural Resources which shall consist of 17 citizens of North Carolina who shall be appointed as is provided in G.S. 143-241.

Each member of the Commission shall be an experienced hunter, fisherman, farmer, or biologist, who shall be generally informed on wildlife conservation and restoration problems.

Members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5 or G.S. 138-6 as the case may be, which shall be paid from fees collected by the Wildlife Resources Commission.

(b) There are established the following geographical wildlife districts:

First district to be composed of the following counties: Bertie, Camden, Chowan, Currituck, Dare, Gates, Hertford, Hyde, Martin, Pasquotank, Perquimans, Tyrrell, Washington.

Second district to be composed of the following counties: Beaufort, Carteret, Craven, Duplin, Greene, Jones, Lenoir, New Hanover, Onslow, Pamlico, Pender, Pitt.

Third district to be composed of the following counties: Edgecombe, Franklin, Halifax, Johnston, Nash, Northampton, Vance, Wake, Warren, Wayne, Wilson.

Fourth district to be composed of the following counties: Bladen, Brunswick, Columbus, Cumberland, Harnett, Hoke, Robeson, Sampson, Scotland.

Fifth district to be composed of the following counties: Alamance, Caswell, Chatham, Durham, Granville, Guilford, Lee, Orange, Person, Randolph, Rockingham.

Sixth district to be composed of the following counties: Anson, Cabarrus, Davidson, Mecklenburg, Montgomery, Moore, Richmond, Rowan, Stanly, Union.

Seventh district to be composed of the following counties: Alexander, Alleghany, Ashe, Davie, Forsyth, Iredell, Stokes, Surry, Watauga, Wilkes, Yadkin.

Eighth district to be composed of the following counties: Avery, Burke, Caldwell, Catawba, Cleveland, Gaston, Lincoln, McDowell, Mitchell, Rutherford, Yancey.

Ninth district to be composed of the following counties: Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, Polk, Swain, Transylvania. (1947, c. 263, s. 4; 1961, c. 737, s. 11/2; 1965, c. 859, s. 2; 1971, c. 285; 1977, c. 771, s. 4; c. 906, s. 1; 1981 (Reg. Sess., 1982), c. 1191, s. 79; 1989, c. 68, s. 1; c. 727, s. 218(112); 1993 (Reg. Sess., 1994), c. 684, s. 13.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 5, 1994, substituted "17 citizens" for "13 citizens" in subsection (a).

§ 143-241. Appointment and terms of office of Commission members; filling of vacancies.

The members of the North Carolina Wildlife Resources Commission shall be appointed as follows:

The Governor shall appoint one member each from the first, fourth, and seventh wildlife districts to serve six-year terms;

The Governor shall appoint one member each from the second, fifth, and eighth wildlife districts to serve two-year terms;

The Governor shall appoint one member each from the third, sixth, and ninth wildlife districts to serve four-year terms;

The Governor shall also appoint two at-large members to serve four-year terms.

The General Assembly shall appoint six members of the Commission to serve two-year terms, three upon the recommendation of the Speaker of the House, one upon the recommendation of the President of the Senate, and two upon the recommendation of the President Pro Tempore of the Senate, in accordance with G.S. 120-121. Of the members appointed upon the recommendation of the Speaker of the House and upon the recommendation of the President Pro Tempore of the Senate, at least one of each shall be a member of the political party to which the largest minority of the members of the General Assembly belongs.

Thereafter as the terms of office of the members of the Commission appointed by the Governor from the several wildlife districts expire, their successors shall be appointed for terms of six years each. As the terms of office of the members of the Commission appointed by the General Assembly expire, their successors shall be appointed for terms of two years each. All members appointed by the Governor serve at the pleasure of the Governor that appointed them and they may be removed by that Governor at any time. A successor to the appointing Governor may remove a Commission member only for cause as provided in G.S. 143B-13. Members appointed by the General Assembly serve at the pleasure of that body and may be removed by law at any time. In the event that a Commission member is removed, the member appointed to replace the removed member shall serve only for the unexpired term of the removed member. (1947, c. 263, s. 5; 1961, c. 737, s. 1; 1965, c. 859, s. 3; 1973, c. 825, s. 2; 1977, c. 906, s. 2; 1981 (Reg. Sess., 1982), c. 1191, s. 80; 1989, c. 68, s. 3; 1993 (Reg. Sess., 1994), c. 684, s. 14.)

Editor's Note. —

Session Laws 1993 (Reg. Sess., 1994), c. 684, which amended this section, in s. 15 provides: "The initial terms of office of the four new members of the Wildlife Resources Commission established in Sections 13 and 14 of this act shall expire on the same date in 1995 as the terms of the other members appointed by the General Assembly."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 5, 1994, in the sixth paragraph substituted "six members" for "two members," substituted "three upon the recommendation" for "one upon the recommendation," substituted "House" for "House and," inserted "and two upon the recommendation of the President Pro Tempore of the Senate," and added the last sentence of that paragraph.

§ 143-250.1. Wildlife Endowment Fund.

(a) Recognizing the inestimable importance to the State and its people of conserving the wildlife resources of North Carolina, and for the purpose of providing the opportunity for citizens and residents of the State to invest in the future of its wildlife resources, there is created the North Carolina Wildlife Endowment Fund, the income and principal of which shall be used only for the purpose of supporting wildlife conservation programs of the State in accordance with this section. This fund shall also be known as the Eddie Bridges Fund.

(b) There is created the Board of Trustees of the Wildlife Endowment Fund of the Wildlife Resources Commission, with full authority over the administration of the Wildlife Endowment Fund, whose ex officio chairman, vice-chairman, and members shall be the chairman, vice-chairman, and members of the Wildlife Resources Commission. The State Treasurer shall be the custodian of the Wildlife Endowment Fund and shall invest its assets in accordance with the provisions of G.S. 147-69.2 and 147-69.3.

(c) **(Effective until July 1, 1995)** The assets of the Wildlife Endowment Fund shall be derived from the following:

(1) The proceeds of any gifts, grants and contributions to the State which are specifically designated for inclusion in the fund;

(2) The proceeds from the sale of lifetime sportsman combination licenses issued in accordance with G.S. 113-270.2(c)(1a), 113-271(d)(1c) and 113-272(d)(1a2);

(3) The proceeds from the sale of lifetime hunting and lifetime fishing licenses in accordance with G.S. 113-270.2(c)(3a) and 113-271(d)(2b);

(4) The proceeds of lifetime subscriptions to the magazine Wildlife in North Carolina at such rates as may be established from time to time by the Wildlife Resources Commission;

(5) Any amount in excess of the statutory fee for a particular lifetime license or lifetime subscription shall become an asset of the fund and shall qualify as a tax exempt donation to the State;

(6) Such other sources as may be specified by law.

(c) **(Effective July 1, 1995)** The assets of the Wildlife Endowment Fund shall be derived from the following:

(1) The proceeds of any gifts, grants and contributions to the State which are specifically designated for inclusion in the fund;

(2) The proceeds from the sale of lifetime sportsman combination licenses issued pursuant to G.S. 113-270.1D;

(3) The proceeds from the sale of lifetime hunting and lifetime fishing licenses pursuant to G.S. 113-270.2(c)(2) and G.S. 113-271(d)(3);

(4) The proceeds of lifetime subscriptions to the magazine Wildlife in North Carolina at such rates as may be established from time to time by the Wildlife Resources Commission;

(5) Any amount in excess of the statutory fee for a particular lifetime license or lifetime subscription shall become an

§ 143-250.1(c) is set out twice. See notes.

asset of the fund and shall qualify as a tax exempt donation to the State;

(6) Such other sources as may be specified by law.

(d) **(Effective until July 1, 1995)** The Wildlife Endowment Fund is declared to constitute a special trust derived from a contractual relationship between the State and the members of the public whose investments contribute to the fund. In recognition of such special trust, the following limitations and restrictions are placed on expenditures from the funds:

(1) Any limitations or restrictions specified by the donors on the uses of the income derived from gifts, grants and voluntary contributions shall be respected but shall not be binding.

(2) No expenditures or disbursements from the income from the proceeds derived from the sale of types I and Y lifetime sportsman combination licenses specified in G.S. 113-270.2(c)(1a), 113-271(d)(1c) and 113-272(d)(1a2) shall be made for any purpose until the respective holders of such licenses attain the age of 16 years. The State Treasurer, as custodian of the fund, shall determine actuarially from time to time the amount of income within the fund which remains encumbered by and which is free of this restriction. For such purpose, the executive director shall cause deposits of proceeds from type I licenses to be distinguished and deposits of proceeds from type Y licenses to be accompanied by information as to the ages of the license recipients.

(3) No expenditure or disbursement shall be made from the principal of the Wildlife Endowment Fund except as otherwise provided by law.

(4) The income received and accruing from the investments of the Wildlife Endowment Fund must be spent only in furthering the conservation of wildlife resources and the efficient operation of the North Carolina Wildlife Resources Commission in accomplishing the purposes of the agency as set forth in G.S. 143-239.

(d) **(Effective July 1, 1995)** The Wildlife Endowment Fund is declared to constitute a special trust derived from a contractual relationship between the State and the members of the public whose investments contribute to the fund. In recognition of such special trust, the following limitations and restrictions are placed on expenditures from the funds:

(1) Any limitations or restrictions specified by the donors on the uses of the income derived from gifts, grants and voluntary contributions shall be respected but shall not be binding.

(2) No expenditures or disbursements from the income from the proceeds derived from the sale of Infant Lifetime Sportsman or Youth Lifetime Sportsman Licenses pursuant to G.S. 113-270.1D(b)(1) or (2) shall be made for any purpose until the respective holders of such licenses attain the age of 16 years. The State Treasurer, as custodian of the fund, shall determine actuarially from time to time the amount of income within the fund which remains encum-

§ 143-250.1(d) is set out twice. See notes.

bered by and which is free of this restriction. For such purpose, the executive director shall cause deposits of proceeds from Infant Lifetime Sportsman Licenses to be distinguished and deposits of proceeds from Youth Lifetime Sportsman Licenses to be accompanied by information as to the ages of the license recipients.

(3) No expenditure or disbursement shall be made from the principal of the Wildlife Endowment Fund except as otherwise provided by law.

(4) The income received and accruing from the investments of the Wildlife Endowment Fund must be spent only in furthering the conservation of wildlife resources and the efficient operation of the North Carolina Wildlife Resources Commission in accomplishing the purposes of the agency as set forth in G.S. 143-239.

(e) The Board of Trustees of the Wildlife Endowment Fund may accumulate the investment income of the fund until the income, in the sole judgment of the trustees, can provide a significant supplement to the budget of the Wildlife Resources Commission. After that time the trustees, in their sole discretion and authority, may direct expenditures from the income of the fund for the purposes set out in division (4) of subsection (d).

(f) Expenditure of the income derived from the Wildlife Endowment Fund shall be made through the State budget accounts of the Wildlife Resources Commission in accordance with the provisions of the Executive Budget Act. The Wildlife Endowment Fund is subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

(g) The Wildlife Endowment Fund and the income therefrom shall not take the place of State appropriations or agency receipts placed in the Wildlife Resources Fund, or any part thereof, but any portion of the income of the Wildlife Endowment Fund available for the purpose set out in division (4) of subsection (d) shall be used to supplement other income of and appropriations to the Wildlife Resources Commission to the end that the Commission may improve and increase its services and become more useful to a greater number of people.

(h) **(Effective until July 1, 1995)** In the event of a future dissolution of the Wildlife Resources Commission, such State agency as shall succeed to its budgetary authority shall, ex officio, assume the trusteeship of the Wildlife Endowment Fund and shall be bound by all the limitations and restrictions placed by this section on expenditures from the fund. No repeal or modification of this section or of G.S. 143-239 shall alter the fundamental purposes to which the Wildlife Endowment Fund may be applied. No future dissolution of the Wildlife Resources Commission or substitution of any agency in its stead shall invalidate any lifetime license issued in accordance with G.S. 113-270.2(c)(1a) or (3a), 113-271(d)(1c) or (2b), or 113-272(d)(1a2).

(h) **(Effective July 1, 1995)** In the event of a future dissolution of the Wildlife Resources Commission, such State agency as shall succeed to its budgetary authority shall, ex officio, assume the trusteeship of the Wildlife Endowment Fund and shall be bound by all the limitations and restrictions placed by this section on expen-

§ 143-250.1(h) is set out twice. See notes.

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ditures from the fund. No repeal or modification of this section or of G.S. 143-239 shall alter the fundamental purposes to which the Wildlife Endowment Fund may be applied. No future dissolution of the Wildlife Resources Commission or substitution of any agency in its stead shall invalidate any lifetime license issued in accordance with G.S. 113-270.1D(b), 113-270.2(c)(2), or 113-271(d)(3). (1981, c. 482, s. 1; 1993, c. 257, s. 15; 1993 (Reg. Sess., 1994), c. 684, ss. 10-12.)

Subsection (c) Set Out Twice. — The first version of subsection (c) set out above is effective until July 1, 1995. The second version of subsection (c) set out above is effective July 1, 1995.

Subsection (d) Set Out Twice. — The first version of subsection (d) set out above is effective until July 1, 1995. The second version of subsection (d) set out above is effective July 1, 1995.

Subsection (h) Set Out Twice. — The first version of subsection (h) set out above is effective until July 1, 1995. The second version of subsection (h) set out above is effective July 1, 1995.

Editor's Note. — Subdivisions 113-270.2(c)(1a), 113-270.2(c)(3a), 113-271(d)(1c), and 113-271(d)(2b), referred to above, are repealed by Session Laws 1993 (Reg. Sess., 1994), c. 684, ss. 2, 4, effective July 1, 1995. See § 113-270.2(c)(2) and § 113-271(d)(3).

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 1, 1995, substituted "pursuant to G.S. 113-270.1D" for "in accordance with G.S. 113-270.2(c)(1a), 113-271(d)(1c) and 113-272(d)(1a2)" in subdivision (c)(2); substituted "pursuant to G.S. 113-270.2(c)(2) and G.S. 113-271(d)(3)" for "in accordance with G.S. 113-270.2(c)(3a) and 113-271(d)(2b)" in subdivision (c)(3); in subdivision (d)(2) substituted "Infant Lifetime Sportsman or Youth Lifetime Sportsman Licenses pursuant to G.S. 113-270.1D(b)(1) or (2)" for "types I and Y lifetime sportsman combination licenses specified in G.S. 113-270.2(c)(1a), 113-271(d)(1c) and 113-272(d)(1a2)," substituted "Infant Lifetime Sportsman Licenses" for "type I licenses," substituted "Youth Lifetime Sportsman Licenses" for "type Y licenses"; and substituted "G.S. 113-270.1D(b), 113-270.2(c)(2), or 113-271(d)(3)" for "G.S. 113-270.2(c)(1a) or (3a), 113-271(d)(1c) or (2b), or 113-272(d)(1a2)" in subsection (h).

ARTICLE 25B.

State Nature and Historic Preserve Dedication Act.

§ 143-260.10F. Road right-of-way; Pilot Mountain State Park.

(a) Notwithstanding the provisions of G.S. 143-260.10, the State of North Carolina may convey a road right-of-way to the Department of Transportation across lands within Pilot Mountain State Park. The right-of-way for the road shall begin 71.9 feet S 70° 41′12″ E of park corner number 94 as shown on the June 1, 1968, Pilot Mountain State Park survey by Southern Mapping & Engineering Company. From point of beginning N 70° 41′ 12″ W for 71.9 feet, then following the centerline of the existing road SR 2068 N 02° 31′ 21″ E for 24.13 feet, then N 25° 17′ 28″ E for 225.06 feet, then N 35° 31′48″ E for 139.35 feet, then with the northern boundary of the park S 55° 48′ 51″ E for 30.0 feet, then along new right-of-way line for approximately 350 feet as shown on Department of Transportation Plat of SR 2068, Shoals Road — McKinney Cut, Surry County, W.O. 6.742488 dated August 28, 1992, to point of beginning. The area of this right-of-way is approximately 17,850 square feet.

(b) The property described in subsection (a) of this section is removed from the State Nature and Historic Preserve and deleted from the State Parks System.

(c) The State shall only use the proceeds from this right-of-way to acquire lands for the expansion of Pilot Mountain State Park. (1993, c. 457, s. 1.)

Editor's Note. — The section above is set out to correct typographical error in the main pamphlet.

ARTICLE 31.

Tort Claims against State Departments and Agencies.

§ 143-291. Industrial Commission constituted a court to hear and determine claims; damages; liability insurance in lieu of obligation under Article.

(a) The North Carolina Industrial Commission is hereby constituted a court for the purpose of hearing and passing upon tort claims against the State Board of Education, the Board of Transportation, and all other departments, institutions and agencies of the State. The Industrial Commission shall determine whether or not each individual claim arose as a result of the negligence of any officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, under circumstances where the State of North Carolina, if a private person, would be liable to the claimant in accordance with the laws of North Carolina. If the Commission finds that there was such negligence on the part of an officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, which was the proximate cause of the injury and that there was no contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted, the Commission shall determine the amount of damages which the claimant is entitled to be paid, including medical and other expenses, and by appropriate order direct the payment of such damages by the department, institution or agency concerned, but in no event shall the amount of damages awarded exceed the sum of one hundred fifty thousand dollars ($150,000) cumulatively to all claimants on account of injury and damage to any one person. Community colleges and technical colleges shall be deemed State agencies for purposes of this Article. The fact that a claim may be brought under more than one Article under this Chapter shall not increase the foregoing maximum liability of the State.

(b) If a State agency, otherwise authorized to purchase insurance, purchases a policy of commercial liability insurance providing coverage in an amount at least equal to the limits of the State Tort

Claims Act, such insurance coverage shall be in lieu of the State's obligation for payment under this Article.

(c) The North Carolina High School Athletic Association, Inc., is a State agency for purposes of this Article, and its liability in tort shall be only under this Article. This subsection does not extend to any independent contractor of the Association. The Association shall be obligated for payments under this Article, through the purchase of commercial insurance or otherwise, in lieu of any responsibility of the State or The University of North Carolina for this payment. The Association shall be similarly obligated to reimburse or have reimbursed the Department of Justice for any expenses in defending any claim against the Association under this Article. (1951, c. 1059, s. 1; 1953, c. 1314; 1955, c. 400, s. 1; c. 1102, s. 1; c. 1361; 1957, c. 65, s. 11; 1965, c. 256, s. 1; 1967, c. 1206, s. 1; 1971, c. 893, s. 1; 1973, c. 507, s. 5; c. 1225, s. 1; 1977, c. 464, s. 34; c. 529, ss. 1, 2; 1979, c. 1053, s. 1; 1987, c. 684, s. 1; 1987 (Reg. Sess., 1988), c. 1087, s. 1; 1993 (Reg. Sess., 1994), c. 769, s. 19.33(a); c. 777, s. 5(a).)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

Effect of Amendments. — Session Laws 1993 (Reg. Sess., 1994), c. 777, s. 5, effective October 1, 1994, and applicable to claims arising on or after that date, in subsection (a), in the third sentence, substituted "one hundred fifty thousand dollars ($150,000)" for "one hundred thousand dollars ($100,000)."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 19.33, effective with respect to causes of action arising on or after the date of ratification of c. 769 (July 16, 1994), added subsection (c).

CASE NOTES

I. In General.

I. IN GENERAL.

Employee Is Personally Liable for Own Negligence. —

Recovery against the county board of education pursuant to the Tort Claims Act did not bar plaintiff's claims against the individual bus driver who caused the wreck, or plaintiff's uninsured motorist/underinsured motorist (UM/UIM) carrier for damages in excess of the maximum recovery allowable under the Tort Claims Act. Oakley v. Thomas, 112 N.C. App. 130, 434 S.E.2d 663 (1993).

Cited in Smith v. North Carolina Dep't of Natural Resources & Community Dev., 112 N.C. App. 739, 436 S.E.2d 878 (1993).

§ 143-292. Notice of determination of claim; appeal to full Commission.

CASE NOTES

Findings and Conclusions of Full Commission. — The legislature's use of the word "may" indicates that although the full Commission is permitted to enter its own findings of fact and conclusions of law, it is not required to do so. Smith v. North Carolina Dep't of Natural Resources & Community Dev., 112 N.C. App. 739, 436 S.E.2d 878 (1993).

The function performed by the full Industrial Commission when addressing claims under the Tort Claims Act is not the same as the one it performs when hearing a workers'

compensation claim. The Commission, when hearing appeals of claims from a hearing commissioner under the Tort Claims Act may make its own findings of fact and conclusions of law, but it is not required to do so. When the claimant appeals to the Commission, making only a general allegation that the hearing commissioner erred in finding that the defendant was not negligent and that such decision was not supported by the evidence, the Commission may respond to such appeal by reviewing the record and, when appropriate, may affirm and adopt the decision and order of the hearing commissioner. Brewington v. North Carolina Dep't of Cor., 111 N.C. App. 833, 433 S.E.2d 798 (1993), cert. denied, 335 N.C. 552, 439 S.E.2d 142 (1993).

Cited in Brewington v. North Carolina Dep't of Cor., 111 N.C. App. 833, 433 S.E.2d 798.

§ 143-293. Appeals to Court of Appeals.

CASE NOTES

Cited in Newgent v. Buncombe County Bd. of Educ., 114 N.C. App. 407, 442 S.E.2d 158 (1994).

§ 143-296. (Effective until June 30, 1995 — See editor's note) Powers of Industrial Commission; deputies.

The members of the Industrial Commission, or a deputy thereof, shall have power to issue subpoenas, administer oaths, conduct hearings, take evidence, enter orders, opinions, and awards based thereon, and punish for contempt. The Industrial Commission is authorized to appoint deputies and clerical assistants to carry out the purpose and intent of this Article, and such deputy or deputies are hereby vested with the same power and authority to hear and determine tort claims against State departments, institutions, and agencies as is by this Article vested in the members of the Industrial Commission. Such deputy or deputies shall also have and are hereby vested with the same power and authority to hear and determine cases arising under the Workers' Compensation Act when assigned to do so by the Industrial Commission. The Commission may order parties to participate in mediation, under rules substantially similar to those approved by the Supreme Court for use in the Superior Court division, except the Commission shall determine the manner in which payment of the costs of the mediated settlement conference is assessed. (1951, c. 1059, s. 6; 1979, c. 714, s. 2; 1993, c. 399, s. 2; c. 321, s. 25(b).)

Editor's Note. — Session Laws 1993, c. 399, s. 5 provides that the amendment by s. 2 of c. 399 is effective October 1, 1993, expires June 30, 1995, and applies to claims pending on or filed after October 1, 1993.

Session Laws 1993, c. 321, s. 25(b) provides that, if HB 658 (Session Laws 1993, c. 399) is enacted, the first sentence of s. 4 of c. 399 is amended by deleting "only if the General Assembly appropriates funds to implement the purpose of this act." However, this language is in the second sentence of section 5 of Chapter 399 and reads "only if the General Assembly appropriates funds to implement the purpose of these sections."

No specific appropriation appears to have been made.

CASE NOTES

Quoted in Smith v. North Carolina Dep't of Natural Resources & Community Dev., 112 N.C. App. 739, 436 S.E.2d 878 (1993).

§ 143-296. (Effective June 30, 1995 — See editor's note) Powers of Industrial Commission; deputies.

The members of the Industrial Commission, or a deputy thereof, shall have power to issue subpoenas, administer oaths, conduct hearings, take evidence, enter orders, opinions, and awards based thereon, and punish for contempt. The Industrial Commission is authorized to appoint deputies and clerical assistants to carry out the purpose and intent of this Article, and such deputy or deputies are hereby vested with the same power and authority to hear and determine tort claims against State departments, institutions, and agencies as is by this Article vested in the members of the Industrial Commission. Such deputy or deputies shall also have and are hereby vested with the same power and authority to hear and determine cases arising under the Workers' Compensation Act when assigned to do so by the Industrial Commission. (1951, c. 1059, s. 6; 1979, c. 714, s. 2; 1993, c. 321, s. 25; c. 399, s. 2.)

Editor's Note. — Session Laws 1993, c. 399, s. 5 provides that the amendment by s. 2 of c. 399 is effective October 1, 1993, expires June 30, 1995, and applies to claims pending on or filed after October 1, 1993. The section is set out above as it read prior to amendment by s. 2 of c. 399.

§ 143-297. Affidavit of claimant; docketing; venue; notice of hearing; answer, demurrer or other pleading to affidavit.

CASE NOTES

Cited in Newgent v. Buncombe County Bd. of Educ., 114 N.C. App. 407, 442 S.E.2d 158 (1994).

§ 143-299.2. Limitation on payments by the State.

CASE NOTES

Cited in Oakley v. Thomas, 112 N.C. App. 130, 434 S.E.2d 663 (1993).

§ 143-300.1. Claims against county and city boards of education for accidents involving school buses or school transportation service vehicles.

CASE NOTES

Operating a Bus. — Defendant's employee could be considered to have been operating bus at the time of the negligent acts complained of—not reporting to the principal that the stop had limited visibility and that there was an alternative stop, and not informing the principal or child's parents that child had previously crossed the highway by himself. Newgent v. Buncombe County Bd. of Educ., 114 N.C. App. 407, 442 S.E.2d 158 (1994).

Cited in Oakley v. Thomas, 112 N.C. App. 130, 434 S.E.2d 663 (1993).

ARTICLE 31A.

Defense of State Employees, Medical Contractors and Local Sanitarians.

§ 143-300.6. Payments of judgments; compromise and settlement of claims.

CASE NOTES

Section Is Not Waiver of Sovereign Immunity. — Nothing in the language of subsection (a) of this section indicates that the state is consenting to suits against it, but only that the state will pay judgments awarded by "courts of competent jurisdiction" in certain suits brought against state employees. Though other provisions of Article 31A suggest that subsection (a) requires the state to pay judgments entered in certain official-capacity actions against its employees, subsection (a) makes it clear that by agreeing to pay such judgments, the State does not intend to waive any underlying defense of sovereign immunity, either common law or constitutional. Barfield v. Blackwood, 7 F.3d 1140 (4th Cir. 1993).

Actions in Federal Court. — Whatever Article 31A may imply about the State's willingness to allow the payment of obligations created by subsection (a) of this section to be enforced against it in its own courts, the implication that it is willing to permit such obligations to be enforced against it in federal court is not so "overwhelming" as to permit a finding of Eleventh Amendment waiver of immunity. Barfield v. Blackwood, 7 F.3d 1140 (4th Cir. 1993).

ARTICLE 33C.

Meetings of Public Bodies.

§ 143-318.9. Public policy.

CASE NOTES

An action by a Board of Education to give itself a pay raise must be deliberated at a meeting open to the public. Jacksonville Daily News Co. v. Onslow County Bd. of Educ., 113 N.C. App. 127, 439 S.E.2d 607 (1993).

§ 143-318.10. All official meetings of public bodies open to the public.

(a) Except as provided in G.S. 143-318.11, G.S. 143-318.14A, G.S. 143-318.15, and G.S. 143-318.18, each official meeting of a public body shall be open to the public, and any person is entitled to attend such a meeting.

(b) As used in this Article, "public body" means any elected or appointed authority, board, commission, committee, council, or other body of the State, or of one or more counties, cities, school administrative units, constituent institutions of The University of North Carolina, or other political subdivisions or public corporations in the State that (i) is composed of two or more members and (ii) exercises or is authorized to exercise a legislative, policy-making, quasi-judicial, administrative, or advisory function. In addition, "public body" means the governing board of a "public hospital" as defined in G.S. 159-39 and the governing board of any nonprofit corporation to which a hospital facility has been sold or conveyed pursuant to G.S. 131E-8, any subsidiary of such nonprofit corporation, and any nonprofit corporation owning the corporation to which the hospital facility has been sold or conveyed.

(c) "Public body" does not include (1) a meeting solely among the professional staff of a public body, or (2) the medical staff of a public hospital.

(d) "Official meeting" means a meeting, assembly, or gathering together at any time or place or the simultaneous communication by conference telephone or other electronic means of a majority of the members of a public body for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business within the jurisdiction, real or apparent, of the public body. However, a social meeting or other informal assembly or gathering together of the members of a public body does not constitute an official meeting unless called or held to evade the spirit and purposes of this Article.

(e) Every public body shall keep full and accurate minutes of all official meetings, including any closed sessions held pursuant to G.S. 143-318.11. Such minutes may be in written form or, at the option of the public body, may be in the form of sound or video and sound recordings. Such minutes shall be public records within the meaning of the Public Records Law, G.S. 132-1 et seq.; provided, however, that minutes of a closed session conducted in compliance with G.S. 143-318.11 may be withheld from public inspection so long as public inspection would frustrate the purpose of a closed session. (1979, c. 655, s. 1; 1985 (Reg. Sess., 1986), c. 932, s. 4; 1991, c. 694, ss. 1, 2; 1993 (Reg. Sess., 1994), c. 570, s. 1.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, and not affecting pending litigation, rewrote subsection (b); in subsection (c) deleted "and shall not be construed to include" preceding "(1)," substituted "a meeting solely among" for "meetings among," inserted "or (2) the medical staff of a public hospital," and deleted from the end "unless the staff members have been appointed to and are meeting as an authority, board, commission, committee, council, or other body established by one of the methods listed in subsection (b)(2) of this section, or (2) meetings among the medical staff of a public hospital"; and in subsection (e), in the first sentence substituted "including any closed sessions" for "excluding any executive sessions," in the second sentence substituted "the Public Records Law, G.S. 132-1 et seq.; provided, however, that minutes of a closed session conducted in compliance with G.S. 143-318.11 may be withheld from public inspection so long as public inspection would frustrate the purpose of a closed session" for "G.S. 132-6."

§ 143-318.11. Closed sessions.

(a) Permitted Purposes. — It is the policy of this State that closed sessions shall be held only when required to permit a public body to act in the public interest as permitted in this section. A public body may hold a closed session and exclude the public only when a closed session is required:

(1) To prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes.

(2) To prevent the premature disclosure of an honorary degree, scholarship, prize, or similar award;

(3) To consult with an attorney employed or retained by the public body in order to preserve the attorney- client privilege between the attorney and the public body, which privilege is hereby acknowledged. General policy matters may not be discussed in a closed session and nothing herein shall be construed to permit a public body to close a meeting that otherwise would be open merely because an attorney employed or retained by the public body is a participant. The public body may consider and give instructions to an attorney concerning the handling or settlement of a claim, judicial action, or administrative procedure. If the public body has approved or considered a settlement, other than a malpractice settlement by or on behalf of a hospital, in closed session, the terms of that settlement shall be reported to the public body and entered into its minutes as soon as possible within a reasonable time after the settlement is concluded;

(4) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body;

(5) To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease; or (ii) the amount of compensation and other material terms of an employment contract or proposed employment contract.

(6) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee. General personnel policy issues may not be considered in a closed session. A public body may not consider the qualifications, competence, performance, character, fitness, appointment, or removal of a member of the public body or another body and may not consider or fill a vacancy among its own membership except in an open meeting. Final action making an appointment or discharge or removal by a public body having final authority for the appointment or discharge or removal shall be taken in an open meeting.

(7) To plan, conduct, or hear reports concerning investigations of alleged criminal misconduct.

(b) Repealed by Session Laws 1991, c. 694, s. 4.

(c) Calling a Closed Session. — A public body may hold a closed session only upon a motion duly made and adopted at an open meeting. Every motion to close a meeting shall cite one or more of the permissible purposes listed in subsection (a) of this section. A motion based on subdivision (a)(1) of this section shall also state the name or citation of the law that renders the information to be discussed privileged or confidential. A motion based on subdivision (a)(3) of this section shall identify the parties in each existing lawsuit concerning which the public body expects to receive advice during the closed session.

(d) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 570, s. 2. (1979, c. 655, s. 1; 1981, c. 831; 1985 (Reg. Sess., 1986), c. 932, s. 5; 1991, c. 694, ss. 3, 4; 1993 (Reg. Sess., 1994), c. 570, s. 2.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, and not affecting pending litigation, substituted "Closed sessions" for "Executive sessions" as the section catchline, rewrote subsections (a) and (c), and repealed subsection (d).

CASE NOTES

Quoted in Durham Herald Co. v. County of Durham, 334 N.C. 677, 435 S.E.2d 317 (1993).

§ 143-318.16A. Additional remedies for violations of Article.

CASE NOTES

Declaration of Violation. — Where Board of Education improperly gave itself a pay raise the proper result was a declaration that the board violated the Open Meetings Law; no purpose would have been served by voiding the Board's action in such a manner as to require return of the monies by the board members. Jacksonville Daily News Co. v. Onslow County Bd. of Educ., 113 N.C. App. 127, 439 S.E.2d 607 (1993).

§ 143-318.16B. Assessments and awards of attorneys' fees.

When an action is brought pursuant to G.S. 143-318.16 or G.S. 143-318.16A, the court may make written findings specifying the prevailing party or parties, and may award the prevailing party or parties a reasonable attorney's fee, to be taxed against the losing party or parties as part of the costs. The court may order that all or any portion of any fee as assessed be paid personally by any individual member or members of the public body found by the court to have knowingly or intentionally committed the violation; provided, that no order against any individual member shall issue in any case where the public body or that individual member seeks the advice of an attorney, and such advice is followed. (1985 (Reg. Sess., 1986), c. 932, s. 2; 1993 (Reg. Sess., 1994), c. 570, s. 3.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, and not affecting pending litigation, substituted "Assessments and awards of attorneys' fees" for "Attorney's fees awarded to prevailing party" as the section catchline; in the first sentence substituted "When an action is" for "In any action," substituted "may make" for "shall make," substituted "may award" for "shall award"; and added the second sentence.

CASE NOTES

Cited in Jacksonville Daily News Co. v. Onslow County Bd. of Educ., 113 N.C. App. 127, 439 S.E.2d 607 (1993).

§ 143-318.16C. Accelerated hearing; priority.

Actions brought pursuant to G.S. 143-318.16 or G.S. 143-318.16A shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts. (1993 (Reg. Sess., 1994), c. 570, s. 4.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994) c. 570, s. 12, made this section effective October 1, 1994, and provides that the section shall not affect pending litigation.

§ 143-318.16D. Local acts.

Any reference in any city charter or local act to an "executive session" is amended to read "closed session". (1993 (Reg. Sess., 1994), c. 570, s. 4.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994) c. 570, s. 12, made this section effective October 1, 1994, and provides that the section shall not affect pending litigation.

§ 143-318.17. (Effective October 1, 1994 — See editor's note) Disruptions of official meetings.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 36.

Department of Administration.

§ 143-336. Definitions.

As used in this Article:

"Agency" includes every agency, institution, board, commission, bureau, council, department, division, officer, and employee of the State, but does not include counties, municipal corporations, political subdivisions, county and city boards of education, and other local public bodies.

"Community college buildings" means all buildings, utilities, and other property developments located at a community college, which is defined in G.S. 115D-2(2).

"Department" means the Department of Administration, unless the context otherwise requires.

"Public buildings" means all buildings owned or maintained by the State in the City of Raleigh, but does not mean any building which a State agency other than the Department of Administration is required by law to care for and maintain.

"Public buildings and grounds" means all buildings and grounds owned or maintained by the State in the City of Raleigh, but does not mean any building or grounds which a State agency other than the Department of Administration is required by law to care for and maintain.

"Public grounds" means all grounds owned or maintained by the State in the City of Raleigh, but does not mean any grounds which a State agency other than the Department of Administration is required by law to care for and maintain.

"Secretary" means the Secretary of Administration, unless the context otherwise requires.

"State buildings" mean all State buildings, utilities, and other property developments except the State Legislative Building, railroads, highway structures, bridge structures, and any buildings, utilities, or property owned or leased by the North Carolina Global TransPark Authority.

But under no circumstances shall this Article or any part thereof apply to the judicial or to the legislative branches of the State. (1957, c. 215, s. 2; c. 269, s. 1; 1963, c. 1, s. 6; 1971, c. 1097, s. 1; 1975, c. 879, s. 46; 1989, c. 58, s. 1; 1991, c. 749, s. 5; 1993 (Reg. Sess., 1994), c. 777, s. 4(h).)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 17, 1994, substituted "Global TransPark" for "Air Cargo Transport" in the definition of "State buildings."

§ 143-340. (See editor's note for date change) Powers and duties of Secretary.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143-341. (See editor's note for date change) Powers and duties of Department.

Editor's Note. —

Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1993, c. 561, s. 70 provides, in subsection (a), that all State-owned passenger motor vehicles which are permanently assigned to the Department of Transportation or its individual employees are exempt from the minimum mileage requirements of subdivision (8)i.7a of this section. The Department shall report of the use of these vehicles to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Highway Oversight Committee on a quarterly basis beginning October 1, 1994. Subsection (b) of s. 70, as amended by Session Laws 1993 (Reg. Sess., 1994), c. 591, s. 13(a), provides that s. 70 expires June 30, 1995.

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143-345.1. (Effective October 1, 1994 — See editor's note) Rules and regulations.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143-345.2. (Effective October 1, 1994 — See editor's note) Disorderly conduct in and injury to public buildings and grounds.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 38.

Water Resources.

§ 143-354. (See editor's note for date change) Ordinary powers and duties of the Commission.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143-355. (See editor's note for date change) Powers and duties of the Department.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 47A.

Art Works in State Buildings.

§ 143-408.1. Short title.

Editor's Note. —

As to the exemption of the Office of State Construction of the Department of Administration from the requirements of this section to the extent necessary to expedite delivery of certain prison facilities, see Session Laws 1994, Extra Session, c. 24, s. 67.

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

§ 143-408.2. Declaration of policy and statement of purpose.

Editor's Note. — As to the exemption of the Office of State Construction of the Department of Administration from the requirements of this section to the extent necessary to expedite delivery of certain prison facilities, see Session Laws 1994, Extra Session, c. 24, s. 67.

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

§ 143-408.3. Definitions.

In this Article, unless the context otherwise requires, the following definitions shall apply:

(1) "Construction" means construction, reconstruction, remodeling, or renovation.

(2) "Contracting officer" means the public officer or body responsible for securing the preparation of plans and specifications for the purpose of negotiating or advertising for bids for the construction of a State building.

(3) "Designer" means an architect or engineer licensed in North Carolina.

(4) "Principal user" means the State agency which will be the principal occupant of the proposed State building. However, in cases where more than one agency will occupy a building, "principal user" means the Secretary of the Department of Administration.

(5) "State building" means any permanent structure together with all grounds and appurtenant structures which are intended as offices; laboratories; workshops; courtrooms; hearing or meeting rooms; medical, dental, library, or museum space for use by the general public; or other space for carrying on the functions of a State agency which is to be constructed, reconstructed, remodeled, or renovated using an appropriation of State funds when the amount appropriated for that purpose exceeds one million dollars ($1,000,000).

(6) "Works of art" or "art works" includes, but is not limited to, paintings, sculptures, fountain sculptures, frescoes, mobiles, murals, collages, mosaics, bas-reliefs, tapestries, photographs, drawings, silk screens, etchings, and lithographs. The term "works of art" or "art works" shall not include any reproductions of original art by mechanical means. (1981 (Reg. Sess., 1982), c. 1384, s. 1; 1987 (Reg. Sess., 1988), c. 1072, s. 1; 1993 (Reg. Sess., 1994), c. 769, s. 12.1(a).)

Editor's Note. — As to the exemption of the Office of State Construction of the Department of Administration from the requirements of this section to the extent necessary to expedite delivery of certain prison facilities, see Session Laws 1994, Extra Session, c. 24, s. 67.

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1993 (Reg. Sess., 1994),

c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 1, 1994, and applicable to State buildings authorized after September 1, 1992, substituted "one million dollars ($1,000,000)" for "five hundred thousand dollars ($500,000)" in subdivision (6).

§ 143-408.4. Appropriations and procedure for inclusion of art works.

(a) One-half of one percent (0.5%) of the amount appropriated for the construction of each State building, not including the amount of funds used for land acquisition, shall be used for the acquisition of works of art for that building.

(b) The amount to be expended for the acquisition of art works for the building shall be included in the stated limit of the design contract and the amount shall also be incorporated by the designer in his total cost estimate for construction.

(c) If the contracting officer, the principal user and the Secretary of Administration jointly determine and certify in writing that, due to the use of the building or other reasons, a particular construction project is not appropriate for the placement of art works the provisions of this Article shall not apply, or, if not appropriate for the expenditure of a full one-half percent (0.5%) of the amount appropriated for construction as defined in G.S. 143-408.3, then in some percentage up to one-half percent.

(d) The selection and commissioning of artists and the acquisition and execution of works of art for State buildings undertaken pursuant to this Article shall be exempt from the provisions of all State bidding requirements. Expenditures for works of art as provided in this Article shall be contracted for separately from all other items in the construction project.

(e) Of the one-half of one percent (0.5%) of the amount appropriated, or, in cases when an appropriation has been made for planning or design only, the amount approved by the Office of State Construction for the construction cost of a State building that is dedicated to the acquisition of works of art pursuant to subsection (a) of this section, no more than twenty percent (20%) of those funds may be used for the administrative costs of acquiring the art works. Funds for the administrative costs for acquisition of the art works shall be disbursed to the Department of Cultural Resources at the time the design contract is signed.

(e1) Of the one-half of one percent (0.5%) of the amount estimated for the construction cost of a State building that is dedicated to the acquisition of works of art pursuant to subsection (a) of this section, up to ten percent (10%) of the funds reserved for the artist's fee may be used as advanced planning funds to enable the artist, upon selection, to develop working drawings and to incorporate plans for the art work in the construction documents for the State building. Funds for advanced planning shall be disbursed at the time the artist's contract is approved.

(e2) Of the one-half of one percent (0.5%) of the amount appropriated for the construction cost of a State building that is dedicated to the acquisition of works of art pursuant to subsection (a) of this section, two percent (2%) shall be placed in a nonreverting fund for the repair and conservation of the works of art in the Art Works for State Buildings Collection in the Department of Cultural Resources.

(f) The Department of Cultural Resources may issue any rules necessary for the implementation of this Article and shall administer the program created by this Article through the North Carolina Arts Council. (1981 (Reg. Sess., 1982), c. 1384, s. 1; 1987, c. 92; 1987 (Reg. Sess., 1988), c. 1072, s. 1; 1993 (Reg. Sess., 1994), c. 769, s. 12.1(b).)

Editor's Note. — As to the exemption of the Office of State Construction of the Department of Administration from the requirements of this section to the extent necessary to expedite delivery of certain prison facilities, see Session Laws 1994, Extra Session, c. 24, s. 67.

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

Effect of Amendments. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 12.1(b), effective July 1, 1994, and applicable to State buildings authorized after September 1, 1992, substituted "appropriated" for "spent" in subsections (a) and (c), inserted "or, in cases when an appropriation has been made for planning or design only, the amount approved by the Office of State Construction" in the first sentence of subsection (e), substituted "that" for "which" and "twenty percent (20%)" for "eight percent (8%)" in that sentence, added the second sentence of subsection (e), added subsections (e1) and (e2), and twice substituted "Article" for "act" in subsection (f).

§ 143-408.5. Selection of artists and works of art.

(a) Whenever a new State building is to be constructed, the contracting officer, together with the designer who has been engaged to prepare the plans for the project, shall consult with the principal user and the Public Arts Administrator of the North Carolina Arts Council, prior to the schematic phase of the building, regarding the works of art to be included in the design of the building and the artist or craftsman to be commissioned for the project.

(b) The selection of artists and works of art shall be the joint determination of the designer, the principal user, the Chairman of the North Carolina Arts Council, and two citizens appointed by the Chairman of the North Carolina Arts Council. (1981 (Reg. Sess., 1982), c. 1384, s. 1; 1987 (Reg. Sess., 1988), c. 1072, s. 1; 1993 (Reg. Sess., 1994), c. 769, s. 12.1(c).)

Editor's Note. — As to the exemption of the Office of State Construction of the Department of Administration from the requirements of this section to the extent necessary to expedite delivery of certain prison facilities, see Session Laws 1994, Extra Session, c. 24, s. 67.

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective

July 1, 1994, and applicable to State buildings authorized after September 1, 1992, inserted "prior to the schematic phase of the building" in subsection (a).

§ 143-408.6. Article not exclusive.

Editor's Note. — As to the exemption of the Office of State Construction of the Department of Administration from the requirements of this section to the extent necessary to expedite delivery of certain prison facilities, see Session Laws 1994, Extra Session, c. 24, s. 67.

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

§ 143-408.7. State not obligated for additional appropriation absent approval by Joint Appropriation Committee.

Editor's Note. — As to the exemption of the Office of State Construction of the Department of Administration from the requirements of this section to the extent necessary to expedite delivery of certain prison facilities, see Session Laws 1994, Extra Session, c. 24, s. 67.

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

ARTICLE 49A.

Equal Employment Practices.

§ 143-422.2. Legislative declaration.

CASE NOTES

The plain language of this statute provides no guidance concerning the requisite elements to establish a prima facie case of a claim under it and there is no basis in the decisional or statutory law of North Carolina for determining even such crucial matters as the burden of proof, which party is to bear that burden, whether there is a defense to a claim flowing from this section, or even whether damages may be compensatory only or punitive. Newton v. Lat Purser & Assocs., 843 F. Supp. 1022 (W.D.N.C. 1994).

No Cause of Action for Wrongful Discharge. —

Because plaintiff stated a claim for sexual harassment and wrongful discharge under Title VII, she stated a claim for wrongful discharge in violation of the public policy expressed in this section, which was sufficient to withstand a motion to dismiss. Of course, insofar as plaintiff's claim was characterized as wrongful discharge in bad faith, that claim was dismissed because North Carolina courts do not recognize a separate and distinct bad faith exception to employment at will. Phillips v. J.P. Stevens & Co., 827 F. Supp. 349 (M.D.N.C. 1993).

Private State Law Cause of Action. — The court assumed without deciding that this statute created a private state law cause of action for the forms of employment discrimination embraced by it, rather than a mere policy statement and given this assumption, the court believed it must abstain from hearing both counts one and two and dismiss them under Burford v. Sun Oil Co., 319 U.S. 315, 63 S. Ct. 1098, 87 L. Ed. 1424

(1943). Newton v. Lat Purser & Assocs., 843 F. Supp. 1022 (W.D.N.C. 1994).

Cited in Jackson v. Kimel, 992 F.2d 1318 (4th Cir. 1993); Abels v. Renfro Corp., 335 N.C. 209, 436 S.E.2d 822 (1993); McCullough v. Branch Banking & Trust Co., 844 F. Supp. 258 (E.D.N.C. 1993).

ARTICLE 52.

Pesticide Board.

Part 5. General Provisions.

§ 143-469. (See editor's note for date change) Penalties.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 59.

Vocational Rehabilitation Services.

§ 143-547. (See editor's note for date change) Subrogation rights; withholding of information a misdemeanor.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 62.

North Carolina Child Fatality Prevention System.

§ 143-573. (Repealed effective February 1, 1997) Task Force — creation; membership; vacancies.

(a) There is created the North Carolina Child Fatality Task Force within the Department of Environment, Health, and Natural Resources for budgetary purposes only.

(b) The Task Force shall be composed of 36 members, 12 of whom shall be ex officio members, four of whom shall be appointed by the Governor, ten of whom shall be appointed by the Speaker of the House of Representatives, and ten of whom shall be appointed by

§ 143-573 has a delayed repeal date. See notes.

the President Pro Tempore of the Senate. The ex officio members other than the Chief Medical Examiner shall be nonvoting members and may designate representatives from their particular departments, divisions, or offices to represent them on the Task Force. The members shall be as follows:

(1) The Chief Medical Examiner;
(2) The Attorney General;
(3) The Director of the Division of Social Services;
(4) The Director of the State Bureau of Investigation;
(5) The Director of the Division of Maternal and Child Health of the Department of Environment, Health, and Natural Resources;
(6) The Director of the Governor's Youth Advocacy and Involvement Office;
(7) The Superintendent of Public Instruction;
(8) The Chairman of the State Board of Education;
(9) The Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services;
(10) The Secretary of the Department of Human Resources;
(11) The Secretary of the Department of Environment, Health, and Natural Resources;
(11.1) The Director of the Administrative Office of the Courts;
(12) A director of a county department of social services appointed by the Governor upon recommendation of the President of the North Carolina Association of County Directors of Social Services;
(13) A representative from a Sudden Infant Death Syndrome counseling and education program appointed by the Governor upon recommendation of the Director of the Division of Maternal and Child Health of the Department of Environment, Health, and Natural Resources;
(14) A representative from the North Carolina Child Advocacy Institute appointed by the Governor upon recommendation of the President of the Institute;
(14.1) A director of a local department of health, appointed by the Governor upon the recommendation of the President of the North Carolina Association of Local Health Directors;
(15) A representative from a private group, other than the North Carolina Child Advocacy Institute, that advocates for children, appointed by the Speaker of the House of Representatives upon recommendation of private child advocacy organizations;
(16) A pediatrician, licensed to practice medicine in North Carolina, appointed by the Speaker of the House of Representatives upon recommendation of the North Carolina Pediatric Society;
(17) A representative from the North Carolina League of Municipalities appointed by the Speaker of the House of Representatives upon recommendation of the League;
(18) Two public members appointed by the Speaker of the House of Representatives;
(19) A county or municipal law enforcement officer appointed by the President Pro Tempore of the Senate upon recom-

mendation of organizations that represent local law enforcement officers;

(20) A district attorney appointed by the President Pro Tempore of the Senate upon recommendation of the President of the North Carolina Conference of District Attorneys;

(21) A representative from the North Carolina Association of County Commissioners appointed by the President Pro Tempore of the Senate upon recommendation of the Association;

(22) Two public members appointed by the President Pro Tempore of the Senate; and

(23) Five members of the Senate appointed by the President Pro Tempore of the Senate and five members of the House of Representatives appointed by the Speaker of the House of Representatives.

(c) All members of the Task Force are voting members. Vacancies in the appointed membership shall be filled by the appointing officer who made the initial appointment. The Speaker of the House of Representatives shall call the first meeting no later than October 1, 1991. At the first meeting the members shall elect a chair who shall preside for the duration of the Task Force. (1991, c. 689, s. 233(a); 1991 (Reg. Sess., 1992), c. 900, s. 169(b); 1993, c. 321, s. 285(a); 1993 (Reg. Sess., 1994), c. 769, s. 27.8(d).)

Section Repealed Effective February 1, 1997. — This section is repealed, effective February 1, 1997, by Session Laws 1993, c. 321, s. 285(b), as amended by Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 27.8(b).

Editor's Note. —

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

Effect of Amendments. —

The 1993 (Reg. Sess., 1994) amendment, by c. 769, s. 27.8(d),effective July 1, 1994, in subsection (b), substituted "36 members" for "30 members" and twice substituted "ten" for "seven" in the first sentence, inserted "shall be nonvoting members and" in the second sentence, and twice substituted "five" for "two" in subdivision (23).

§ 143-574. (Repealed effective February 1, 1997) Task Force — duties.

Section Repealed Effective February 1, 1997. — This section is repealed, effective February 1, 1997, by Session Laws 1993, c. 321, s. 285(c), as amended by Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 27.8(b).

§ 143-577. (Repealed effective February 1, 1997) Task Force — reports.

(a) The Task Force shall provide a preliminary report to the Governor and General Assembly, within the first week of the convening of the 1992 Session of the 1991 General Assembly. This preliminary report shall contain at least a summary of preliminary conclusions and recommendations for each of the Task Force's duties, as well as any other recommendations for changes to any law, rule, and policy

§ 143-577 has a delayed repeal date. See notes.

that it has determined will promote the safety and well-being of children. Any recommendations of changes to law, rule, or policy shall be accompanied by specific legislative or policy proposals and detailed fiscal notes setting forth the costs to the State.

(b) The Task Force shall provide updated reports to the Governor and General Assembly within the first week of the convening of the 1993 General Assembly, within the first week of the convening of the 1994 Regular Session of the 1993 General Assembly, within the first week of the convening of the 1995 General Assembly, and within the first week of the convening of the 1996 Regular Session of the 1995 General Assembly. The Task Force shall provide a final report to the Governor and General Assembly within the first week of the convening of the 1997 General Assembly. The final report shall include final conclusions and recommendations for each of the Task Force's duties, as well as any other recommendations for changes to any law, rule, and policy that it has determined will promote the safety and well-being of children. Any recommendations of changes to law, rule, or policy shall be accompanied by specific legislative or policy proposals and detailed fiscal notes setting forth the costs to the State.

(c) After the Task Force provides its final report to the Governor and General Assembly, the Task Force shall cease to be in existence. (1991, c. 689, s. 233(a); 1991 (Reg. Sess., 1992), c. 900, s. 169(a); 1993 (Reg. Sess., 1994), c. 769, s. 27.8(a).)

Section Repealed Effective February 1, 1997. — This section is repealed, effective February 1, 1997, by Session Laws 1993, c. 321, s. 285(d), as amended by Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 27.8(b).

Editor's Note. —

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvement Appropriations Act of 1994.'"

Effect of Amendments. —

The 1993 (Reg. Sess., 1994) amendment by c. 769, s. 27.8(a), effective July 1, 1994, in the first sentence of subsection (b), deleted "and" following "1993 General Assembly," inserted "Regular" following "1994" and added "within the first week of the convening of the 1995 General Assembly, and within the first week of the 1996 Regular Session of the 1995 General Assembly" at the end; and substituted "1997" for "1995" in the second sentence of subsection (b).

ARTICLE 66.

Health Care Purchasing Alliance Act.

§ 143-623. Health benefit plans subject to Article.

A health benefit plan is subject to this Article if it provides health benefits for small employers in accordance with the criteria set forth in G.S. 58-50-115 and is issued through an alliance pursuant to G.S. 143-628. (1993, c. 529, s. 3.1; 1993 (Reg. Sess., 1994), c. 569, s. 11.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective June 22, 1994, substituted "in accordance with the criteria set forth in G.S. 58-50-115 and is issued through an alliance pursuant to G.S. 143-628" for "and if any of the following conditions are met," and deleted the three conditions listed.

§ 143-625. Establishment of the Board; membership; terms; personnel.

(a) There is established the State Health Plan Purchasing Alliance Board. The Board shall be established within the Department of Administration for administrative, organizational, and budgetary purposes only. The Department of Administration shall provide administrative and staff support to the Board. The Department of Insurance shall provide technical assistance as requested by the Board.

(b) The Board shall consist of 11 members, as follows:

(1) Three appointed by the Governor, at least one of whom shall be an owner or manager of a member small employer of an Alliance operating in North Carolina; and at least one of whom shall be an employee enrollee of an Alliance operating in North Carolina;

(2) Three appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, in accordance with G.S. 120-121, at least one of whom shall be an owner or manager of a member small employer of an Alliance operating in North Carolina; and at least one of whom shall be an employee enrollee of an Alliance operating in North Carolina;

(3) Three appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, at least one of whom shall be an owner or manager of a member small employer of an Alliance operating in North Carolina; and at least one of whom shall be an employee enrollee of an Alliance operating in North Carolina;

(4) The Lieutenant Governor or his or her representative; and

(5) The Commissioner of Insurance or his or her representative.

(c) Members of the Board who are not officers or employees of the State shall receive compensation of two hundred dollars ($200.00) for each day or part of a day of service plus reimbursement for travel and subsistence expenses at the rates specified in G.S. 138-5. Members of the Board who are officers or employees of the State shall receive reimbursement for travel and subsistence at the rates specified in G.S. 138-6.

(d) Appointed members shall serve for four-year terms except that the initial terms of:

(1) Two members appointed by the Governor, two members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and one member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, shall expire July 1, 1995; and

(2) One member appointed by the Governor, one member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and two members appointed by the General Assembly upon the rec-

ommendation of the Speaker of the House of Representatives, shall expire July 1, 1997.

(e) At the end of a term, a member shall continue to serve until a successor is appointed. A member who is appointed after a term has begun serves only for the remainder of the term and until a successor is appointed. A member who serves two consecutive full four-year terms shall not be reappointed until four years after completion of those terms. A vacancy in a legislative appointment shall be filled in accordance with G.S. 120-122.

(f) The Board shall elect officers biennially. Officers shall serve no more than two consecutive terms in an office.

(g) The Board shall appoint an executive director who shall serve at the pleasure of the Board. The executive director shall administer the affairs of the Board. The executive director may employ and direct staff necessary to carry out the provisions of this Article. Staff of the Board shall be covered under the State Personnel Act.

(h) The Board shall meet as needed at the times and places it determines. Such meetings and procedures shall be governed by the procedures and policies set forth in the North Carolina Open Meetings Law, Article 33C of Chapter 143 of the General Statutes. A majority of the fully authorized membership of the Board is a quorum.

(i) No Board members or their spouses shall be employed by, affiliated with an agent of, or otherwise a representative of any carrier or health care provider.

(j) No individual shall be appointed to or remain a member of the Board if the individual, the individual's spouse, or the individual and spouse together, held securities or are otherwise the beneficiaries of securities worth ten thousand dollars ($10,000) or more at fair market value as of December 31 of the preceding year in a single health care business or aggregated among multiple health care businesses. For the purposes of this subsection, the term, "health care business":

(1) Includes an association, corporation, enterprise, joint venture, organization, partnership, proprietorship, trust, and every other business interest that provides or insures human health care.

(2) Does not include a widely held investment fund, regulated investment company, or pension or deferred compensation plan if neither the individual nor the individual's spouse has the ability to exercise control over the financial interests held by the fund.

(k) There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member of the Board, or its employees or agents, for any action taken in good faith by them in the performance of their powers and duties as defined under G.S. 143-626. (1993, c. 529, s. 3.1; 1993 (Reg. Sess., 1994), c. 569, s. 12.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective June 22, 1994, added subsection (k).

§§ 143-637 through 143-639: Reserved for future codification purposes.

ARTICLE 67.

First Flight Centennial Commission.

§ 143-640. Commission established; purpose; members; terms of office; quorum; compensation; termination.

(a) Establishment. — There is established the First Flight Centennial Commission. The Commission shall be located within the Department of Cultural Resources for organizational, budgetary, and administrative purposes.

(b) Purpose. — The purpose of the Commission is to develop and plan activities to commemorate the centennial of the first successful manned, controlled, heavier-than-air, powered flight (in this Article referred to as "the First Flight") and other historical events related to the development of powered flight.

(c) Membership. — The Commission shall consist of 26 members, as follows:

(1) Four persons appointed by the Governor.
(2) Four persons appointed by the President Pro Tempore of the Senate.
(3) Four persons appointed by the Speaker of the House of Representatives.
(4) The following persons or their designees, ex officio:
  a. The Governor.
  b. The President Pro Tempore of the Senate.
  c. The Speaker of the House of Representatives.
  d. The United States Senators from this State.
  e. The member of the United States House of Representatives for the Third Congressional District.
  f. The Governor of the State of Ohio.
  g. The Secretary of the Department of Cultural Resources.
  h. The Superintendent of the Cape Hatteras National Seashore of the United States National Park Service.
  i. The chair of the Centennial of Flight Commemoration Commission.
  j. The President of the First Flight Society.
  k. The chair of the Dare County Board of Commissioners.
  l. The Mayor of the Town of Kill Devil Hills.
  m. The chair of the Dare County Tourism Board.

The members appointed to the First Flight Centennial Commission shall be chosen from among individuals who have the ability and commitment to promote and fulfill the purposes of the Commission, including individuals who have demonstrated expertise in the fields of aeronautics, aerospace science, or history, who have contributed to the development of the fields of aeronautics or aerospace science, or who have demonstrated a commitment to serving the public.

(d) Terms. — Members shall serve for two-year terms, with no prohibition against being reappointed, except initial appointments shall be for terms as follows:

(1) The Governor shall initially appoint two members for a term of two years and two members for a term of three years.

(2) The President Pro Tempore of the Senate shall initially appoint two members for a term of two years and two members for a term of three years.

(3) The Speaker of the House of Representatives shall initially appoint two members for a term of two years and two members for a term of three years.

Initial terms shall commence on July 1, 1994.

(e) Chair. — The chair shall be appointed biennially by the Governor from among the membership of the Commission. The initial term shall commence on July 1, 1994.

(f) Vacancies. — A vacancy in the Commission or as chair of the Commission resulting from the resignation of a member or otherwise shall be filled in the same manner in which the original appointment was made and the term shall be for the balance of the unexpired term.

(g) Compensation. — The Commission members shall receive no salary as a result of serving on the Commission but shall receive per diem, subsistence, and travel expenses in accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6, as applicable. When approved by the Commission, members may be reimbursed for subsistence and travel expenses in excess of the statutory amount.

(h) Removal. — Members may be removed in accordance with G.S. 143B-13 as if that section applied to this Article.

(i) Meetings. — The chair shall convene the Commission. Meetings shall be held as often as necessary, but not less than four times a year.

(j) Quorum. — A majority of the members of the Commission shall constitute a quorum for the transaction of business. The affirmative vote of a majority of the members present at meetings of the Commission shall be necessary for action to be taken by the Commission.

(k) Termination of Commission. — The Commission shall terminate June 30, 2004, which is six months after the 100th anniversary of the First Flight. (1993 (Reg. Sess., 1994), c. 777, s. 7(a).)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 777, s. 10, makes this Article effective upon ratification. The act was ratified July 17, 1994.

Session Laws 1993 (Reg. Sess., 1994), c. 777, which enacted this Article, in s. 7(b) provides: "The Department of Cultural Resources shall use funds within its budget for the 1994-95 fiscal year, in the amount of seventy-five thousand dollars ($75,000) for the establishment and operation of the First Flight Centennial Commission during the term of the Commission."

§ 143-641. Powers and duties of the Commission.

(a) Powers and Duties. — The Commission shall have the following powers and duties:

(1) To plan and develop activities appropriate to commemorate the centennial of the First Flight, including the coordination of activities throughout the State and nation.

(2) To coordinate with the national Centennial of Flight Commemoration Commission and the 2003 Fund Commission of Ohio in planning and promoting commemorative events and activities.

(3) To appoint a director, who shall be exempt from the State Personnel Act, to employ other staff as it deems necessary, subject to the State Personnel Act, and to fix their compensation.

(4) To adopt bylaws by a majority vote of the Commission.

(5) To accept grants, contributions, devises, bequests, gifts, and services for the purpose of providing support to the Commission. The funds and property shall be retained by the Commission, and the Commission shall prescribe rules under which the Commission may accept donations of money, property, or personal services, and determine the value of donations of property or personal services.

(6) To design, seek clearance for, and register with the Secretary of State a logo as the official emblem of the First Flight celebration, in coordination with the federal advisory commission. The Commission shall issue rules regarding the use of the logo.

(b) Commemoration Activities. — In planning and implementing appropriate activities to commemorate the centennial of the First Flight, the Commission shall give due consideration to:

(1) The historical setting in which the First Flight of the Wright Brothers took place.

(2) The contribution of powered flight to the development of transportation worldwide.

(3) The contribution that powered flight has made to worldwide trade and the economic development of the United States and all nations.

(4) The contribution that powered flight has made to world peace and security.

(5) The need to educate the public regarding the research and development of powered flight, and to acknowledge the development of aeronautics, aerospace science, and the aerospace industry, including the development of the glider and Orville and Wilbur Wright's contribution to the development of the glider.

(6) The development of aerospace science and the aerospace industry since the First Flight, including the development of space exploration.

(7) The importance of activities to commemorate the First Flight and to honor Orville and Wilbur Wright and their contribution to powered flight.

(8) The need to expand the facilities of the Wright Brothers National Memorial to honor Orville and Wilbur Wright and to educate the public regarding the development of powered flight and the development of aeronautics and aerospace science since the First Flight.

(9) The commitment and efforts of the First Flight Society and the National Park Service to preserving the Wright Brothers National Memorial and to honoring Orville and Wilbur Wright on the centennial of the First Flight.

(c) Contract Authority. — The Commission may procure supplies, services, and property as appropriate, and may enter into contracts, leases, or other legal agreements to carry out the purposes of this Article. All contracts, leases, or legal agreements entered into by the Commission shall terminate on the date of termination of the Commission. Termination shall not affect any disputes or causes of action of the Commission that arise before the date of termination, and the Department of Cultural Resources may prosecute or defend any causes of action arising before the date of termination. All property acquired by the Commission that remains in the possession of the Commission on the date of termination shall become the property of the Department of Cultural Resources. (1993 (Reg. Sess., 1994), c. 777, s. 7(a).)

§ 143-642. Assignment of property; offices.

(a) Assignment of Property. — Upon request of the Commission, the head of any State agency may assign property, equipment, and personnel of such agency to the Commission to assist the Commission in carrying out its duties under this Article. Assignments under this subsection shall be without reimbursement by the Commission to the agency from which the assignment was made. Property and equipment that remains in the possession of the Commission on the date of the termination of the Commission shall revert to the agency from which the property was acquired.

(b) Office Space. — The Department of Cultural Resources shall provide office space in Raleigh for use as offices by the First Flight Centennial Commission, and the Department of Cultural Resources shall receive no reimbursement from the Commission for the use of the property during the life of the Commission. (1993 (Reg. Sess., 1994), c. 777, s. 7(a).)

§ 143-643. Commission reports.

(a) Annual Report. — Before July 1, 1995, the Commission shall submit to the General Assembly a comprehensive report incorporating specific recommendations of the Commission for commemoration of the First Flight and other historical events related to the development of powered flight. After the initial report, the Commission shall submit a report to the General Assembly within 30 days of the convening of each Regular Session of the General Assembly until the Commission terminates. The report shall include:

(1) Recommendations for appropriate activities for the commemoration, including:
  a. Publications, both printed and electronic, of books, periodicals, films, videotapes, and other promotional and educational materials.
  b. Scholarly projects, conferences, lectures, seminars, and programs.
  c. Libraries, exhibits, and museums.
  d. Competitions and awards for historical, scholarly, artistic, and other works and projects related to the centennial.
  e. Ceremonies and celebrations, including a calendar of major activities, commemorating the centennial and other related historical events and achievements.

(2) Recommendations for legislation and administrative action to promote and develop the commemoration.

(3) An accounting of funds received and expended.

(b) Final Report. — The Commission shall submit a final report to the General Assembly no later than June 30, 2004. The final report shall include:

(1) A summary of the activities of the Commission.
(2) A final accounting of funds received and expended by the Commission.
(3) Recommendations concerning the disposition of historically significant property donated to or acquired by the Commission. (1993 (Reg. Sess., 1994), c. 777, s. 7(a).)

Chapter 143A.

Editor's Note. — The legislation and annotations affecting Chapter 143A have been included in a recently published replacement chapter.

Chapter 143B.

Executive Organization Act of 1973.

Article 2.

Department of Cultural Resources.

Part 10A. State Capitol Preservation Act.

Sec.
143B-80.5. Short title.
143B-80.6. Legislative findings.
143B-80.7. Definitions.
143B-80.8. Capitol Preservation Commission — Creation; purpose; cooperation with the Department of Cultural Resources and the Department of Administration.
143B-80.9. Capitol Preservation Commission — Membership.
143B-80.10. Compensation and expenses of members; travel reimbursements.
143B-80.11. Capitol Preservation Commission — Powers and duties.
143B-80.12. Commission staff.
143B-80.13. Allocation of space in the State Capitol.
143B-80.14. Capitol Preservation Fund.

Part 27. Roanoke Voyages and Elizabeth II Commission.

143B-129 through 143B-131. [Repealed.]

Part 27A. Roanoke Island Commission.

143B-131.1. Commission established.
143B-131.2. Roanoke Island Commission — Powers and duties.
143B-131.3. Assignment of property; offices.
143B-131.4. Commission reports.
143B-131.5. Roanoke Island Commission — Additional powers and duties; transfer of assets and liabilities.
143B-131.6. Roanoke Island Commission — Members; terms; vacancies; expenses; officers.
143B-131.7. Roanoke Island Commission — Counsel.

Article 3.

Department of Human Resources.

Part 5A. S.O.S. Program.

143B-152.1. Establishment of program; purpose; goals.

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Part 3. Art Museum Building Commission.

§ 143B-58. Art Museum Building Commission — creation, powers and duties.

CASE NOTES

Cited in State ex rel. State Art Museum Bldg. Comm'n v. Travelers Indem. Co., 111 N.C. App. 330, 432 S.E.2d 419 (1993).

§ 143B-61.1. Termination of the Art Museum Building Commission.

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Cited in State ex rel. State Art Museum Bldg. Comm'n v. Travelers Indem. Co., 111 N.C. App. 330, 432 S.E.2d 419 (1993).

Part 8. U.S.S. North Carolina Battleship Commission.

§ 143B-74.3. (Effective October 1, 1994 — See editor's note) U.S.S. North Carolina Battleship Commission — employees not to have interest.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 10A. State Capitol Preservation Act.

§ 143B-80.5. Short title.

This Part is the "State Capitol Preservation Act" and may be cited by that name. (1993 (Reg. Sess., 1994), c. 682, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 682, s. 5, made this Part effective July 1, 1994, except that G.S. 143B-80.8(b) and G.S. 143B-80.11(2), (6) and (8) become effective July 1, 1995.

Session Laws 1993 (Reg. Sess., 1994), c. 682, which enacted this Part, in s. 3 provides: "The Office of State Construction, Department of Administration shall do a capital needs assessment of the State Capitol and shall report to the Capitol Preservation Commission and the 1995 General Assembly regarding its findings and recommendations by delivering copies to the Executive Director of the Capitol Preservation Commission, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Director of the Fiscal Research Division of the Legislative Services Office. The report shall be made not later than seven days after the convening of the 1995 General Assembly."

Session Laws 1993 (Reg. Sess., 1994), c. 682, which enacted this Part, in s. 4 provides: "This act shall be funded from funds available to the Office of the Governor."

§ 143B-80.6. Legislative findings.

The General Assembly finds that:

(1) The Capitol was designated a National Historic Landmark in 1974 and has been called the most distinguished of all state capitols by architectural historians.

(2) The North Carolina State Capitol, completed in 1840, is one of the finest and best preserved examples of a major civic building in the Greek Revival Style of architecture. It is also an important exhibition of American craftsmanship in the period just before power-driven machinery and mass production replaced the creative skills of the stone cutter, the joiner, the blacksmith, and the cabinetmaker.

(3) Improvements to the North Carolina State Capitol to make it more functional through the years, have been made with

a sympathetic concern to effect as little change as possible in the building. That approach, coupled with the solidity of the original construction and the continuity of original use, has resulted in a capitol perhaps less changed internally and externally than any other major civic building of its age in the United States. Thus, much of the stonework, the ornamental plaster and ironwork, the furniture of the legislative chambers, and the marble mantels in the Capitol today are original, not restorations or reproductions.

(4) The Capitol housed all of State government until the 1880s and continued to house the General Assembly until 1963. The Governor and Lieutenant Governor still have their offices in the Capitol and the Secretary of State has a ceremonial office in the Capitol.

(5) Efforts have been made toward the restoration and preservation of buildings, structures, documents, artifacts, and objects evidencing the history of this eminent State and of the General Assembly, and these efforts should be continued and intensified.

(6) Particular attention should be given to the preservation of the architectural and historical integrity of the State Capitol Building and to the restoration and preservation of artifacts, documents, and other historical objects and resources located within that building.

(7) The most effective way to promote and foster the historic preservation of the State Capitol Building is by the establishment of a commission to supervise and coordinate this work. (1993 (Reg. Sess., 1994), c. 682, s. 1.)

§ 143B-80.7. Definitions.

The following definitions apply in this Part:

(1) Commission. — The Capitol Preservation Commission.

(2) Fund. — The Capitol Preservation Fund.

(3) Union Square. — The grounds that are the site of the North Carolina State Capitol bounded by Edenton Street, Salisbury Street, Morgan Street, and Wilmington Street. The term includes trees, vegetation, and any monument located on the grounds. (1993 (Reg. Sess., 1994), c. 682, s. 1.)

§ 143B-80.8. Capitol Preservation Commission — Creation; purpose; cooperation with the Department of Cultural Resources and the Department of Administration.

(a) There is established the Capitol Preservation Commission within the Department of Cultural Resources. The Commission is to serve as both an advocate and custodian of the State Capitol Building and Union Square. As an advocate the Commission shall ensure that the needs of the State Capitol and Union Square are brought to the attention of the Department of Cultural Resources, the Department of Administration, the Governor, the General Assembly, and the citizens of this State.

(b) **(Effective July 1, 1995)** The purpose of the Commission is:

§ 143B-80.8(b) has a delayed effective date. See notes.

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(1) To preserve and maintain the State Capitol building as a structure having historical significance and value to the State of North Carolina. All areas of the State Capitol except the offices, washrooms, and working areas of the first floor shall be preserved as historic shrines and shall be maintained insofar as practicable as they appeared following the restoration of the State Capitol.

(2) To improve the furnishings of the State Capitol by encouraging gifts and objects of art, furniture, and articles which may have historical value and, with the advice and consent of the Secretary of Cultural Resources, to approve any major changes in the furnishings of the State Capitol.

(3) To identify and approve any major renovations, improvements, or repairs needed to the State Capitol, Union Square, or monuments in Union Square.

(4) To keep a complete list of all gifts and articles received by the Capitol, together with their history and value.

(5) To publicize the work of the Commission and its role in preserving and maintaining the Capitol.

(c) Both the Department of Cultural Resources and the Department of Administration shall cooperate with and assist the Commission in carrying out the provisions of this Part. The Commission may contract with any public or private agency, as appropriate, to provide general services, labor, or other assistance needed to carry out the provisions of this Part. The Department of Administration shall continue to issue permits for the use of Union Square in accordance with G.S. 143-345.1. (1993 (Reg. Sess., 1994), c. 682, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994) c. 682, which enacted this Part, in s. 5 provides: "Section 2 of this act becomes effective July 1, 1995. The remainder of this act becomes effective July 1, 1994, except that G.S. 143B-80.8(b) and G.S. 143B-80.11(2), (6) and (8) become effective July 1, 1995, so that the Capitol Preservation Commission shall not assume responsibility for the maintenance, repair, preservation, or administration of the Capitol as provided by Part 10A of Article 2 of Chapter 143B of the General Statutes as enacted by this act until July 1, 1995. Initial appointments to the Commission shall be made within 60 days following the date of ratification [July 5, 1994]."

§ 143B-80.9. Capitol Preservation Commission — Membership.

(a) The Commission shall be composed of 17 members as follows:

(1) Three members to be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121. One of those members shall have experience or background in the restoration of monumental buildings, historical restoration, or fine arts conservation. Two of those members may be appointed upon the recommendation of the Executive Committee of the State Capitol Foundation.

(2) Three members to be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. One of those members shall have experience or background in the resto-

ration of monumental buildings, historical restoration, or fine arts conservation. Two of those members may be appointed upon the recommendation of the Executive Committee of the State Capitol Foundation.

(3) Six members to be appointed by the Governor. The six members shall have experience or background in the restoration of monumental buildings, historical restoration, or fine arts conservation.

(4) The Governor or the Governor's designee who shall serve as an ex officio member.

(5) The Lieutenant Governor or the Lieutenant Governor's designee who shall serve as an ex officio member.

(6) The Secretary of State or the Secretary's designee who shall serve as an ex officio member.

(7) The Secretary of the Department of Cultural Resources or the Secretary's designee who shall serve as an ex officio member.

(8) The Secretary of the Department of Administration or the Secretary's designee who shall serve as an ex officio member.

(b) Criteria for appointments — Each of the individuals making appointments and recommendations for appointments shall have as a goal that minority persons and women are represented on the Commission and shall seek to achieve a balanced membership representing, to the maximum extent practicable, the State as a whole. No member appointed to serve on the Commission shall be an officer or employee of the legislative branch of State government. No member appointed to serve on the Commission, other than in an ex officio capacity or as a designee of an ex officio member, shall be a member of the executive or judicial branch of State government at the time of the member's appointment.

(c) Terms — Members shall serve four year terms, except initial appointments shall be for terms as follows:

(1) The General Assembly upon the recommendation of the Speaker of the House of Representatives shall initially appoint two members each to serve a term of two years and one member to serve a term of four years. The Speaker of the House of Representatives may consider the recommendations of the Executive Committee of the State Capitol Foundation, in making his recommendations to the General Assembly.

(2) The General Assembly upon the recommendation of the President Pro Tempore of the Senate shall initially appoint two members each to serve a term of two years and one member to serve a term of four years. The President Pro Tempore of the Senate may consider the recommendations of the Executive Committee of the State Capitol Foundation, in making his recommendations to the General Assembly.

(3) The Governor shall initially appoint three members to serve a term of two years and three members to serve a term of four years.

All initial terms shall commence July 1, 1994.

(d) Chair — The Governor shall appoint the chair from among the members of the Commission to serve for a term of two years.

(e) Removal of members — The Commission may remove any member who misses three consecutive meetings of the Commission. A vacancy created under this subsection shall be filled in the manner provided in subsection (f) of this section.

(f) Vacancies — Vacancies in the membership of the Commission shall be filled for the balance of the unexpired term in the same manner as the original appointment. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122.

(g) Quorum and meeting time — A majority of all the members of the Commission shall constitute a quorum for the transaction of business. The Commission shall meet initially no later than September 1, 1994. Thereafter, the Commission shall meet not less than twice each year. (1993 (Reg. Sess., 1994), c. 682, s. 1.)

§ 143B-80.10. Compensation and expenses of members; travel reimbursements.

Members of the Commission shall serve without compensation but may receive travel and subsistence as provided in G.S. 138-5 and G.S. 138-6. Reimbursements for travel and subsistence shall be taken from the Capitol Preservation Fund. (1993 (Reg. Sess., 1994), c. 682, s. 1.)

§ 143B-80.11. Capitol Preservation Commission — Powers and duties.

The Commission shall have the following powers and duties and shall exercise those powers and duties with the advice and consent of the Secretary of Cultural Resources:

(1) Develop a comprehensive plan and program for the historic preservation and restoration of the State Capitol and Union Square.

(2) **(Effective July 1, 1995)** Make all repairs, alterations, and improvements to the State Capitol, including the furnishing and refurnishing of the State Capitol, subject to the availability of funds.

(3) Receive on behalf of the State, gifts or bequests of artifacts, documents, and other historical objects or resources which contribute to the historical significance of the State Capitol.

(4) Accept grants and subsidies from and enter into agreements or other transactions with any federal agency, State agency, or other entity.

(5) Enter into contracts and execute all instruments necessary or convenient for carrying on its operations.

(6) **(Effective July 1, 1995)** Make budgetary requests and recommendations to the Governor and the General Assembly regarding the funds needed to properly preserve and maintain the Capitol in accordance with Article 1 of Chapter 143 of the General Statutes.

(7) Administer the Capitol Preservation Fund as provided in G.S. 143B-80.13.

(8) **(Effective July 1, 1995)** Contract with the Department of Administration to provide the security needed for the Capitol and Union Square.

(9) Do all other things necessary or convenient to carry out the powers granted to it by this Part.

(10) Adopt rules to implement this Part. (1993 (Reg. Sess., 1994), c. 682, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994) c. 682, which enacted this Part, in s. 5 provides: "Section 2 of this act becomes effective July 1, 1995. The remainder of this act becomes effective July 1, 1994, except that G.S. 143B-80.8(b) and G.S. 143B-80.11(2), (6) and (8) become effective July 1, 1995, so that the Capitol Preservation Commission shall not assume responsibility for the maintenance, repair, preservation, or administration of the Capitol as provided by Part 10A of Article 2 of Chapter 143B of the General Statutes as enacted by this act until July 1, 1995. Initial appointments to the Commission shall be made within 60 days following the date of ratification [July 5, 1994]."

§ 143B-80.12. Commission staff.

The Commission shall appoint and fix the salary of an Executive Director to serve at its pleasure. The Executive Director shall direct the preservation, operation, improvement, maintenance, and repairs needed to the State Capitol Building and Union Square. The Executive Director may hire one secretary to assist with clerical responsibilities. (1993 (Reg. Sess., 1994), c. 682, s. 1.)

§ 143B-80.13. Allocation of space in the State Capitol.

The Governor shall allocate the space in the Capitol, including the working areas, among the various departments as the Governor deems appropriate. However, the Governor shall continue to occupy the space traditionally designated as the Governor's Office. The Lieutenant Governor and the Secretary of State shall also retain space in the Capitol as assigned by the Governor. The Governor may deny the use of the legislative chambers for meetings in order that the chambers, with their historic furnishings, may be better preserved for posterity. However, the General Assembly may hold any sessions in the legislative chambers that it may by resolution deem proper. The Governor shall assign some office space to the Commission in the Capitol. If additional space is needed outside the Capitol for the Commission, the Department of Cultural Resources shall provide that office space as feasible. The Department of Cultural Resources shall not charge the Commission for the space. (1993 (Reg. Sess., 1994), c. 682, s. 1.)

§ 143B-80.14. Capitol Preservation Fund.

(a) There is established within the Department of Cultural Resources a special nonreverting fund to be known as the Capitol Preservation Fund. Revenue in this fund shall be administered by the Commission with the advice and consent of the Secretary of Cultural Resources for the purposes of subsection (b) of this section.

(b) The moneys in the Fund shall be used:

(1) For the restoration, preservation, and rehabilitation of artifacts, documents, and other historical objects or resources

located within and around or associated with the State Capitol and Union Square or acquired by the Commission.

(2) For the restoration, preservation, and rehabilitation of the building, monuments, and grounds of the State Capitol and Union Square.

(3) For the acquisition of artifacts, documents, and other historical objects or resources, including but not limited to, statuary, art, or any element which contributes to the historical significance of the State Capitol.

(c) The Commission may accept on behalf of the State gifts, donations, legacies, and usages of money from individuals, organizations, public or private corporations, and other similar entities. The Commission may also solicit and raise moneys from public and private sources through the sale of commemorative medals and other items of a similar nature which promote the historic preservation and restoration of the State Capitol Building and Union Square.

Except for appropriations made by the General Assembly, all moneys received or raised under this section shall be deposited to the Capitol Preservation Fund. (1993 (Reg. Sess., 1994), c. 682, s. 1.)

Part 27. Roanoke Voyages and Elizabeth II Commission.

§§ 143B-129 through 143B-131: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 12.5(c), effective October 1, 1994.

Cross References. — As to the Roanoke Island Commission, see now § 143B-131.1 et seq.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 12.5(d), provides that effective October 1, 1994, the statutory authority, powers, duties, functions, records, personnel, property, and funds of the Roanoke Voyages and Elizabeth II Commission are transferred to the Roanoke Island Commission, and that all its prescribed powers are transferred as well.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 12.5(b), effective October 1, 1994, amended Session Laws 1985, c. 673, ss. 3.2 and 3.3 (see Editor's notes following G.S. 143B-130 and 143B-131 in the main pamphlet) by deleting "Section 2" and substituting "Section 3".

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

Part 27A. Roanoke Island Commission.

§ 143B-131.1. Commission established.

There is established the Roanoke Island Commission. The Commission shall be located within the Department of Cultural Resources for organizational, budgetary, and administrative purposes. (1993 (Reg. Sess., 1994), c. 769, s. 12.5(a).)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 12.5(e), makes this Part effective October 1, 1994.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 12.5(d), provides that effective October 1, 1994, the statutory authority, powers, duties, functions, records, personnel, property, and funds of the Roanoke Voyages and Elizabeth II Commission are transferred to the Roanoke Island Commission, and that all its prescribed powers are transferred as well.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

§ 143B-131.2. Roanoke Island Commission — Powers and duties.

(a) The Commission is created to combine various existing entities in the spirit of cooperation for a cohesive body to protect, preserve, develop, and interpret the historical and cultural assets of Roanoke Island.

The Commission may:

(1) Advise the Secretary of Transportation and adopt rules on matters pertaining to, affecting, and encouraging restoration, preservation, and enhancement of the appearance and aesthetic quality of U.S. Highway 64/264 and N.C. 400 travel corridors on Roanoke Island.

(2) Advise the Secretary of the Department of Cultural Resources and adopt rules on matters pertinent to the operation and maintenance of the Elizabeth II State Historic Site and Visitor Center and the Elizabeth II as permanent memorials commemorating the Roanoke Voyages, 1584-1587.

(3) Advise the Secretary of the Department of Cultural Resources and adopt rules on matters pertinent to the development of Ice Plant Island and to manage future facilities in cooperation with the Department of Cultural Resources.

(4) Advise the Secretary of the Department of Cultural Resources on matters pertinent to historical and cultural events on Roanoke Island.

(5) With the assistance of the Department of Cultural Resources, identify, preserve, and protect properties located on Roanoke Island having historical significance to the State of North Carolina, Dare County, or the Town of Manteo consistent with applicable State laws and Department rules.

(6) Make recommendations to the Secretary of the Department of Cultural Resources for establishing and providing a proper charge for admission to the ship, and for the maintenance and operation of the ship, the visitor center, and the grounds as a permanent memorial and exhibit.

(7) Solicit and accept gifts, grants, and donations.

(8) Cooperate with the Secretary and Department of Cultural Resources, the Secretary and Department of Transportation, the Secretary and Department of Environment, Health, and Natural Resources, and other governmental agencies, officials, and entities, and provide them with assistance and advice.

(9) Adopt and enforce such bylaws, rules, regulations, and guidelines that the Commission deems to be reasonably necessary in order to carry out its powers and duties.

(10) Establish and maintain a "Roanoke Island Commission Fund" composed of moneys which may come into its hands from gifts, donations, grants, or bequests, which funds will be used by the Commission for purposes of carrying out its duties and purposes herein set forth. The Commission may establish a reserve fund to be maintained and used for contingencies and emergencies.

(11) By cooperative arrangement with other agencies, groups, individuals, and other entities, coordinate and schedule historical and cultural events on Roanoke Island.

(12) Make recommendations to the Secretary of Cultural Resources concerning personnel and budgetary matters.

(13) Acquire real and personal property by purchase, gift, bequest, devise, and exchange.

(b) Contract Authority. — The Commission may procure supplies, services, and property as appropriate and may enter into contracts, leases, or other legal agreements consistent with State laws and Department rules to carry out the purposes of this Part and duties of the Commission. (1993 (Reg. Sess., 1994), c. 769, s. 12.5(a).)

§ 143B-131.3. Assignment of property; offices.

Upon request of the Commission, the head of any State agency may assign property, equipment, and personnel of such agency to the Commission to assist the Commission in carrying out its duties under this Part. Assignments under this section shall be without reimbursement by the Commission to the agency from which the assignment was made. (1993 (Reg. Sess., 1994), c. 769, s. 12.5(a).)

§ 143B-131.4. Commission reports.

Before July 1, 1995, the Commission shall submit to the General Assembly a comprehensive report incorporating specific recommendations of the Commission for development and promotion of the Elizabeth II State Historic Site and Visitor Center. After the initial report, the Commission shall submit a report to the General Assembly within 30 days of the convening of each Regular Session of the General Assembly. The report shall include:

(1) A summary of actions taken by the Commission consistent with the powers and duties of the Commission set forth in G.S. 143B-131.2.
(2) Recommendations for legislation and administrative action to promote and develop the Elizabeth II State Historic Site and Visitor Center.
(3) An accounting of funds received and expended. (1993 (Reg. Sess., 1994), c. 769, s. 12.5(a).)

§ 143B-131.5. Roanoke Island Commission — Additional powers and duties; transfer of assets and liabilities.

(a) The Commission shall also have the powers and duties established by Chapter 1194, Session Laws of 1981, as amended.

(b) Effective October 1, 1994, all lawful standards, rules, regulations, guidelines, contracts, agreements, permits, bylaws, and certificates of appropriateness of or issued by the Roanoke Voyages Corridor Commission or the Roanoke Voyages and Elizabeth II Commission shall remain in effect until modified, amended, revoked, repealed, or changed (as appropriate) by the Roanoke Island Commission in accordance with law.

(c) Effective October 1, 1994, all the assets and liabilities of the Roanoke Voyages and Elizabeth II Commission are vested in the Roanoke Island Commission. (1993 (Reg. Sess., 1994), c. 769, s. 12.5(a).)

§ 143B-131.6. Roanoke Island Commission — Members; terms; vacancies; expenses; officers.

(a) The Commission shall consist of 24 voting members appointed as follows:
(1) Six members appointed by the Governor;
(2) Six members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, at least two of whom reside in Dare County;
(3) Six members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, at least two of whom reside in Dare County; and
(4) The following persons, or their designees, ex officio:
   a. The Governor;
   b. The Attorney General;
   c. The Secretary of the Department of Cultural Resources;
   d. The Secretary of the Department of Transportation;
   e. The Chair of the Dare County Board of Commissioners; and
   f. The Mayor of Manteo.

(b) Members shall serve for two-year terms, with no prohibition against being reappointed, except initial appointments shall be for terms as follows:
(1) The Governor shall initially appoint three members for a term of two years and three members for a term of three years.

(2) The General Assembly upon the recommendation of the President Pro Tempore of the Senate shall initially appoint three members for a term of two years and three members for a term of three years.

(3) The General Assembly upon the recommendation of the Speaker of the House of Representatives shall initially appoint three members for a term of two years and three members for a term of three years.

Initial terms shall commence on October 1, 1994.

(c) The Governor shall appoint a chair biennially from among the membership of the Commission. The initial term of the chair shall commence on October 1, 1994. The Commission shall elect from its membership a vice-chair, a secretary, and treasurer to serve two-year terms. The Commission in its discretion may appoint a historian to serve at its pleasure. Initial terms shall commence on October 1, 1994.

(d) A vacancy in the Commission resulting from the resignation of a member or otherwise, shall be filled in the same manner in which the original appointment was made, and the term shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122.

(e) The Commission members shall receive no salary as a result of serving on the Commission but shall receive per diem, subsistence, and travel expenses in accordance with the provisions of G.S. 138-5 and G.S. 138-6, as applicable. When approved by the Commission, members may be reimbursed for subsistence and travel expenses in excess of the statutory amount.

(f) Members may be removed in accordance with G.S. 143B-13 as if that section applied to this Part.

(g) The chair shall convene the Commission. Meetings shall be held as often as necessary, but not less than two times a year.

(h) A majority of the members of the Commission shall constitute a quorum for the transaction of business. The affirmative vote of a majority of the members present at meetings of the Commission shall be necessary for action to be taken by the Commission.

(i) The Commission shall make its recommendations by September 15 of each year that terms expire for appointments for terms commencing November 1 of that year; provided the initial appointments for terms commencing October 1, 1994, shall be made upon recommendation of the Roanoke Island Historical Association. (1993 (Reg. Sess., 1994), c. 769, s. 12.5(a).)

§ 143B-131.7. Roanoke Island Commission — Counsel.

The Attorney General shall assign legal counsel to the Commission. (1993 (Reg. Sess., 1994), c. 769, s. 12.5(a).)

ARTICLE 3.

Department of Human Resources.

Part 1. General Provisions.

§ 143B-138. Department of Human Resources — functions and organization.

Editor's Note. —

As amended by Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 25.26, Session Laws 1994, Extra Session, c. 24, s. 36 provides that the Department of Human Resources shall conduct a study of the Division of Youth Services' juvenile justice system in order to ensure the efficacy, cost-effectiveness, and optimal utilization of the system and its continuum of services. Of the funds appropriated to the Department, one hundred fifty thousand dollars ($150,000) for the 1993-94 fiscal year is to be used to fund the study. The study is to be completed by March 1, 1995, and the results are to be reported to the General Assembly by April 1, 1995.

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Part 5A. S.O.S. Program.

§ 143B-152.1. Establishment of program; purpose; goals.

(a) There is created in the Department of Human Resources the Support Our Students (S.O.S.) Program. The purpose of the program is to award grants to neighborhood- and community-based organizations to establish local S.O.S. programs that provide high quality after-school activities for school-aged children and provide for comprehensive, collaborative delivery of services by public and nonpublic agencies to these children. These services shall be designed to enrich and make a positive impact on the lives of school-aged children. These after-school activities may include activities after the regular school day and activities on days that students are not required to attend school.

(b) The goals of the program are to:

(1) Reduce juvenile crime in local communities served by the program;

(2) Recruit community volunteers to provide positive adult role models for school-aged children and to help supervise after-school activities;

(3) Reduce the number of students who are unsupervised after school, otherwise known as "latchkey" children;

(4) Improve the academic performance of students participating in the program;
(5) Meet the physical, intellectual, emotional, and social needs of students participating in the program and improve their attitudes and behavior; and
(6) Improve coordination of existing resources and enhance collaboration so as to provide services to school-aged children effectively and efficiently. (1994, Ex. Sess., c. 24, s. 30(a).)

Editor's Note. — Session Laws 1994, Extra Session, c. 24, which enacted this Part, in s. 3 provides: "This act shall be known as the Crime Control and Prevention Act of 1994."

Session Laws 1994, Extra Session, c. 24, s. 73 makes this Part effective upon ratification. The Act was ratified March 26, 1994.

Session Laws 1994, Extra Session, c. 24, s. 30(b) to (e) provides:

"(b) of the funds appropriated to the Department of Human Resources for the S.O.S. Program for the 1994-95 fiscal year, the Department may use up to two hundred thousand dollars ($200,000) to administer the S.O.S. Program, to provide technical assistance to applicants and to S.O.S. programs, and to evaluate the local S.O.S. programs. The Department may contract with appropriate public or nonprofit agencies to provide the technical assistance, including training and related services.

"(c) It is the goal of the General Assembly that wherever possible programs that receive grants for the 1994-95 fiscal year shall begin no later than July 1, 1994.

"(d) In awarding grants under the S.O.S. Program, the Department shall ensure that the continuation costs of the State of the Program in subsequent fiscal years do not exceed the cost of the Program for the 1994-95 fiscal year.

"(e) Notwithstanding G.S. 143-23, and with the approval of the Office of State Budget and Management, the Department of Human Resources may use up to two hundred thousand dollars ($200,000) of the funds appropriated or otherwise available for the 1993-94 fiscal year to begin implementation of this section prior to July 1, 1994. The amount available to implement this section for the 1994-95 fiscal year shall be reduced by the amount spent prior to July 1, 1994."

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1994, Extra Session, c. 24, s. 71 is a severability clause.

§ 143B-152.2. Definitions.

As used in this Part, "school-aged children" means children enrolled in kindergarten through the ninth grade. (1994, Ex. Sess., c. 24, s. 30(a).)

§ 143B-152.3. Administration of the program.

The Department shall develop and implement the Support Our Students (S.O.S.) Program. The Department shall:
(1) Sponsor a statewide conference each year for teams of interested representatives to provide background information and assistance regarding all aspects of the program;
(2) Disseminate information regarding the program to interested neighborhood and community groups;
(3) Develop and disseminate a request for applications to establish local S.O.S. programs;
(4) Provide initial technical assistance to grant applicants and ongoing technical assistance as grants are implemented;

(5) Administer funds appropriated by the General Assembly;
(6) Monitor the grants funded;
(7) Revoke a grant if necessary or appropriate;
(8) Develop and implement a performance-based evaluation system to evaluate the program, in accordance with G.S. 143B-152.7(a);
(9) Report on the program implementation to the General Assembly, the Joint Legislative Committee on Governmental Operations, and the Office of the Governor, in accordance with G.S. 143B-152.7(b); and
(10) Adopt any rules necessary to implement this Part. (1994, Ex. Sess., c. 24, s. 30(a).)

§ 143B-152.4. Eligible applicants; application for grants.

(a) A community- or neighborhood-based 501(c)(3) entity or a consortium consisting of one or more local 501(c)(3) entities and one or more local school administrative units may apply for a grant.

(b) Applicants for grants shall submit to the Department an application that includes the following information:

(1) Identification of one or more neighborhoods to be served by the local S.O.S. program, based on a needs assessment of existing conditions for school-aged children to be served. Data used in the needs assessment may include for each neighborhood to be served by a local program (i) dropout statistics, (ii) the number and percentage of school-aged children who participate in the federal subsidized lunch program, (iii) the number of suspensions and expulsions involving school-aged children, (iv) the number of children to be served, (v) the number and percentage of students with two working parents or one single parent to be served at a site, (vi) the incidence of juvenile crime in the neighborhood, and (vii) any other relevant or unique local demographic data.

Local authorities shall provide this or related information on a timely basis to local 501(c)(3) entities submitting applications to establish local S.O.S. programs;

(2) A three-year plan that addresses data used in the needs assessment and that includes proposed goals and anticipated outcomes of the local S.O.S. program. The plan shall be prepared after consultation with local after-school programs, schools, community organizations or groups which have as their purpose assisting or helping school-aged children who are at risk of failing in school or entering the juvenile justice system, or other appropriate groups. In addition, the three-year plan shall provide for regular collaborative efforts to seek input and advice from parents of the students being served and from other citizens who reflect the demographic conditions of the students being served;

(3) A statement of how grant funds would be used to address local problems and what other resources would be used to address the problems. This statement should include a list of services to be offered that are related to the goals and outcomes and should include plans for recruiting volunteers to assist in the program's activities; and

(4) A process for assessing on an annual basis the success of the local plan for addressing the goals of the local S.O.S. program. (1994, Ex. Sess., c. 24, s. 30(a).)

§ 143B-152.5. Grants review and selection.

(a) The Department shall develop and disseminate a request for applications and establish procedures to be followed in developing and submitting applications to establish local S.O.S. programs and administering grants to establish local S.O.S. programs.

(b) The Secretary of Human Resources shall appoint a State task force to assist the Secretary in reviewing grant applications. The State task force shall include representatives of the Department of Human Resources, the Department of Public Instruction, local school administrative units, educators, parents, the juvenile justice system, social services, and governmental agencies providing services to children, and other members the Secretary considers appropriate. In appointing the State task force, the Secretary shall consult with the Superintendent of Public Instruction in an effort to coordinate the membership of this State task force, the State task force appointed by the Secretary pursuant to G.S. 143B-152.14, and the State task force appointed by the Superintendent pursuant to G.S. 115C-238.42.

In reviewing grant applications, the Secretary and the State task force may consider (i) the severity of the local problems as determined by the needs assessment data, (ii) the likelihood that the locally designed plan will result in high quality after-school services for school-aged children, (iii) evidence of local collaboration and coordination of services, (iv) any innovative or experimental aspects of the plan that will make it a useful model for replication in other neighborhoods and communities, and (v) any other factors which affect the well-being of school-aged children.

(c) In determining the amount of funds an applicant receives, the Secretary and the State task force may consider (i) the number of children to be served, (ii) the number and percentage of children to be served who participate in the subsidized lunch program, (iii) the number and percentage of school-aged children with two working parents or one single parent to be served, (iv) the availability of other resources or funds, and (v) the amount needed to implement the proposal.

(d) The Secretary shall award the grants. (1994, Ex. Sess., c. 24, s. 30(a).)

§ 143B-152.6. Cooperation of State and local agencies.

All agencies of the State and local government, including departments of social services, health departments, local mental health, mental retardation, and substance abuse authorities, court personnel, law enforcement agencies, The University of North Carolina, the community college system, and cities and counties, shall cooperate with the Department of Human Resources, and local nonprofit corporations that receive grants in coordinating the program at the State level and in implementing the program at the local level. The Secretary of Human Resources, after consultation with the Superintendent of Public Instruction, shall develop a plan for ensuring the cooperation of State agencies and local agencies, and encouraging the cooperation of private entities, especially those receiving State funds, in the coordination and implementation of the program. (1994, Ex. Sess., c. 24, s. 30(a).)

§ 143B-152.7. Program evaluation; reporting requirements.

(a) The Department of Human Resources shall develop and implement an evaluation system that will assess the efficiency and effectiveness of the S.O.S. Program. The Department shall design this system to:

(1) Provide information to the Department and to the General Assembly on how to improve and refine the programs;

(2) Enable the Department and the General Assembly to assess the overall quality, efficiency, and impact of the existing programs;

(3) Enable the Department of the General Assembly to determine whether to modify the S.O.S. Program; and

(4) Provide a detailed fiscal analysis of how State funds for these programs were used.

(b) The Department shall report to the General Assembly and the Joint Legislative Commission on Governmental Operations by May 15, 1994, on its progress in developing the evaluation system and in developing and implementing the program. It shall report prior to February 1, 1995, on the evaluation system developed by the Department and on program implementation. The Department shall present an annual report on October 1, 1995, and annually thereafter to the General Assembly and to the Joint Legislative Commission on Governmental Operations on the implementation of the program and the results of the program evaluation.

The Department shall also report annually to the Joint Legislative Commission on Governmental Operations and to the Governor on the implementation of the S.O.S. Program.

(c) A local 501(c)(3) entity or consortium that receives a grant under this Part shall report by August 1 of each year to the Department on the implementation of the program. This report shall demonstrate the extent to which the local S.O.S. Program has met the local needs, goals, and anticipated outcomes as set forth in the grant applications. (1994, Ex. Sess., c. 24, s. 30(a).)

§§ 143B-152.8, 143B-152.9: Reserved for future codification purposes.

Part 5B. Family Resource Center Grant Program.

§ 143B-152.10. Family Resource Center Grant Program; creation; purpose; intent.

(a) There is created in the Department of Human Resources the Family Resource Center Grant Program. The purpose of the program is to provide grants to establish family resource centers that provide services to children from birth through elementary school age and to their families that:

(1) Enhance the children's development and ability to attain academic and social success;
(2) Ensure a successful transition from early childhood education programs and child care to the public schools;
(3) Assist families in achieving economic independence and self-sufficiency; and
(4) Mobilize public and private community resources to help children and families in need.

(b) It is the intent of the General Assembly to encourage and support broad-based collaboration among public and private agencies and among people who reflect the racial and socioeconomic diversity in communities to develop initiatives that (i) prepare children to learn effectively and to have a successful school experience, (ii) enhance the ability of families to become advocates for and supporters of education for the children in their families, and (iii) enhance the ability of families to function as nurturing and effective family units.

(c) It is further the intent of the General Assembly that this program shall be targeted to those neighborhoods that have disproportionately high levels of (i) children who would be less likely to attain educational or social success, (ii) families with low incomes, and (iii) crime and juvenile delinquency. (1994, Ex. Sess., c. 24, s. 31(a).)

Editor's Note. — Session Laws 1994, Extra Session, c. 24, s. 73, makes this Part effective upon ratification. The Act was ratified March 26, 1994.

Session Laws 1994, Extra Session, c. 24, which enacted this Part, in s. 3 provides: "This act shall be known as the Crime Control and Prevention Act of 1994."

Session Laws 1994, Extra Session, c. 24, s. 31(b) to (e) provides:

"(b) Of the funds appropriated to the Department of Human Resources for the Family Resource Center Grant Program for the 1994-95 fiscal year, the Department may use up to two hundred thousand dollars ($200,000) to administer the Family Resource Center Grant Program, to provide technical assistance to applicants and to local family resource centers, and to evaluate the local family resource centers. The Department may contract with appropriate public or nonprofit agencies to provide the technical assistance, including training and related services.

"(c) It is the goal of the General Assembly that wherever possible programs that receive grants for the 1994-95 fiscal year shall begin no later than July 1, 1994.

"(d) In awarding grants under the Family Resource Center Grant Program, the Department shall ensure that the continuation costs to the State of the program in subsequent fiscal years do not exceed the cost of the program for the 1994-95 fiscal year.

"(e) Notwithstanding G.S. 143-23, and with the approval of the Office of State Budget and Management, the Department of Human Resources may use up to two hundred thousand dollars ($200,000) of the funds appropriated or otherwise available for the 1993-94 fiscal year to begin implementation of this section prior to July 1, 1994. The amount available to implement this section for the 1994-95 fiscal year shall be reduced by the amount spent prior to July 1, 1994."

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1994, Extra Session, c. 24, s. 71 is a severability clause.

§ 143B-152.11. Administration of program.

The Department of Human Resources shall develop and implement the Family Resource Center Grant Program. The Department shall:

(1) Sponsor a statewide conference for teams of interested representatives to provide background information and assistance regarding all aspects of the program;
(2) Disseminate information regarding the program to interested local community groups;
(3) Provide initial technical assistance and ongoing technical assistance to grant recipients;
(4) Administer funds appropriated by the General Assembly;
(5) Monitor the grants funded and the ongoing operations of family resource centers;
(6) Revoke a grant if necessary or appropriate;
(7) Report to the General Assembly and the Joint Legislative Commission on Governmental Operations, in accordance with G.S. 143B-152.15; and
(8) Adopt rules to implement this Part. (1994, Ex. Sess., c. 24, s. 31(a).)

§ 143B-152.12. Eligible applicants: applications for grants.

(a) A community- or neighborhood-based 501(c)(3) entity or a consortium consisting of one or more local 501(c)(3) entities and one or more local school administrative units may apply for a grant.

(b) Applicants for grants shall identify the neighborhood or neighborhoods whose children and families will be served by a family resource center. The decision-making process for identifying and establishing family resource centers shall reflect the racial and socioeconomic diversity of the neighborhood or neighborhoods to be served.

(c) A grant application shall include a process for assessing on an annual basis the success of the local plan in addressing problems. (1994, Ex. Sess., c. 24, s. 31(a).)

§ 143B-152.13. Grants review and selection.

(a) The Department shall develop and disseminate a request for applications and establish procedures to be followed in developing and submitting applications to establish local family resource centers and administering grants to establish local family resource centers.

(b) The Secretary of Human Resources shall appoint a State task force to assist the Secretary in reviewing grant applications. The State task force shall include representatives of the Department of Human Resources, the Department of Public Instruction, local school administrative units, educators, parents, the juvenile justice system, social services, and governmental agencies providing services to children, and other members the Secretary considers appropriate. In appointing the State task force, the Secretary shall consult with the Superintendent of Public Instruction in an effort to coordinate the membership of this State task force, the State task force appointed by the Secretary pursuant to G.S. 143B-152.5, and the State task force appointed by the Superintendent pursuant to G.S. 115C-238.42.

In reviewing grant applications, the Secretary and the State task force may consider (i) the severity of the local problems as determined by the needs assessment data, (ii) the likelihood that the locally designed plan will result in high quality services for children and their families, (iii) evidence of local collaboration and coordination of services, (iv) any innovative or experimental aspects of the plan that will make it a useful model for replication in other counties, (v) the availability of other resources or funds, (vi) the incidence of crime and juvenile delinquency, (vii) the amount needed to implement the proposal, and (viii) any other factors consistent with the intent of this Part.

(c) In determining the amount of funds an applicant receives, the Secretary and the State task force may consider (i) the number of children to be served, (ii) the number and percentage of children to be served who participate in the subsidized lunch program, (iii) the number and percentage of school-aged children to be served with two working parents or one single parent, (iv) the availability of other resources or funds, and (v) the amount needed to implement the proposal.

(d) The Secretary shall award the grants. (1994, Ex. Sess., c. 24, s. 31(a).)

§ 143B-152.14. Cooperation of State and local agencies.

All agencies of the State and local government, including departments of social services, health departments, local mental health, mental retardation, and substance abuse authorities, court personnel, law enforcement agencies, The University of North Carolina, the community college system, and cities and counties, shall cooperate with the Department of Human Resources, and local nonprofit corporations that receive grants in coordinating the program at the State level and in implementing the program at the local level. The Secretary of Human Resources, after consultation with the Superintendent of Public Instruction, shall develop a plan for ensuring the cooperation of State agencies and local agencies and encouraging the cooperation of private entities, especially those receiving State funds, in the coordination and implementation of the program. (1994, Ex. Sess., c. 24, s. 31(a).)

§ 143B-152.15. Program evaluation; reporting requirements.

(a) The Department of Human Resources shall develop and implement an evaluation system that will assess the efficiency and effectiveness of the Family Resource Center Grant Program. The department shall design this system to:

(1) Provide information to the Department and to the General Assembly on how to improve and refine the programs;

(2) Enable the Department and the General Assembly to assess the overall quality, efficiency, and impact of the existing programs;

(3) Enable the Department and the General Assembly to determine whether to modify the Family Resource Center Grant Program; and

(4) Provide a detailed fiscal analysis of how State funds for these programs were used.

(b) The Department shall report to the General Assembly and the Joint Legislative Commission on Governmental Operations by May 15, 1994, on its progress in developing the evaluation system and in developing and implementing the program. It shall report prior to February 1, 1995, on the evaluation system developed by the Department and on program implementation. The Department shall present an annual report on October 1, 1995, and annually thereafter to the General Assembly and to the Joint Legislative Commission on Governmental Operations on the implementation of the program and the results of the program evaluation.

(c) A local 501(c)(3) entity or consortium that receives a grant under this Part shall report by August 1 of each year to the Department on the implementation of the program. This report shall demonstrate the extent to which the local family resource center has met the local needs, goals, and anticipated outcomes as set forth in the grant application. (1994, Ex. Sess., c. 24, s. 31(a).)

Part 10B. Early Childhood Initiatives.

§ 143B-168.10. Early childhood initiatives; findings.

Editor's Note. — Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

§ 143B-168.11. Early childhood initiatives; purpose; definitions.

(a) The purpose of this Part is to establish a framework whereby the General Assembly, upon consultation with the Governor, may support through financial and other means, the North Carolina Partnership for Children, Inc. and comparable local partnerships, which have as their missions the development of a comprehensive, long-range strategic plan for early childhood development and the provision, through public and private means, of high-quality early childhood education and development services for children and families. It is the intent of the General Assembly that communities be given the maximum flexibility and discretion practicable in developing their plans.

(b) The following definitions apply in this Part:

(1) Board of Directors. — The Board of Directors of the North Carolina Partnership for Children, Inc.

(2) Department. — The Department of Human Resources.

(3) Local Partnership. — A local, private, nonprofit 501(c)(3) organization established to coordinate a local demonstration project under this Part.

(4) North Carolina Partnership. — The North Carolina Partnership for Children, Inc.

(5) Secretary. — The Secretary of Human Resources. (1993, c. 321, s. 254(a); 1993 (Reg. Sess., 1994), c. 766, s. 1.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 16, 1994, substituted "purpose; definitions" for "intent, North Carolina Partnership for Children, Inc." in the catchline of this section; rewrote subsection (a); and added subsection (b).

§ 143B-168.12. North Carolina Partnership for Children, Inc.; conditions.

(a) In order to receive State funds, the following conditions shall be met:

(1) Members of the Board of Directors shall consist of the following 33 members:
  a. The Secretary of Human Resources, ex officio;
  b. The Secretary of Environment, Health, and Natural Resources, ex officio;
  c. The Superintendent of Public Instruction, ex officio;
  d. The President of the Department of Community Colleges, ex officio;
  e. One resident from each of the 1st, 3rd, 5th, 7th, 9th, and 11th Congressional Districts, appointed by the President Pro Tempore of the Senate;
  f. One resident from each of the 2nd, 4th, 6th, 8th, 10th, and 12th Congressional Districts, appointed by the Speaker of the House of Representatives; and
  g. Seventeen members, of whom four shall be members of the party other than the Governor's party, appointed by the Governor.

(2) The North Carolina Partnership shall agree to adopt procedures for its operations that are comparable to those of Article 33C of Chapter 143 of the General Statutes, the Open Meetings Law, and Chapter 132 of the General Statutes, the Public Records Law, and provide for enforcement by the Department.

(3) The North Carolina Partnership shall oversee the development and implementation of the local demonstration projects as they are selected.

(b) The North Carolina Partnership shall be subject to audit and review by the State Auditor under Article 5A of Chapter 147 of the General Statutes. The State Auditor shall conduct annual financial and compliance audits of the North Carolina Partnership. (1993, c. 321, s. 254(a); 1993 (Reg. Sess., 1994), c. 766, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 25.33, provides that the Department of Human Resources, in cooperation with the North Carolina Partnership for Children, Inc., shall ensure that the selection process for the additional local demonstration projects for the Early Childhood Education and Development Initiatives funded in the act shall include (1) acceptance of applications from counties that have not yet applied for funding, (2) acceptance of additional information from counties that have already applied, and (3) consideration of the needs and resources assessment that has been conducted in each county.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as "The Current Operations and

Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 16, 1994, rewrote this section.

§ 143B-168.13. Implementation of program; duties of Department and Secretary.

(a) The Department shall:

(1) Develop a statewide process, in cooperation with the North Carolina Partnership, to select the local demonstration projects. The first 12 local demonstration projects developed and implemented shall be located in the 12 congressional districts, one to a district. The locations of subsequent selections of local demonstration projects shall represent the various geographic areas of the State.

(2) Develop, in cooperation with the North Carolina Partnership, a needs and resource assessment for each county. Of the funds appropriated to it to implement this Part, the Department may make available funds to each county for one year to an appropriate private nonprofit entity or to the county to perform this assessment.

(3) Provide technical and administrative assistance to local partnerships, particularly during the first year after they are selected under this Part to receive State funds. The Department, at any time, may authorize the North Carolina Partnership or a governmental or public entity to do the contracting for one or more local partnerships. After a local partnership's first year, the Department may allow the partnership to contract for itself.

(4) Adopt, in cooperation with the North Carolina Partnership, any rules necessary to implement this Part, including rules to ensure that no State funds or local funds used to supplant these State funds shall be used for personnel sick leave and annual leave benefits not allowed to State employees. In order to allow local partnerships to focus on the development of long-range plans in their initial year of funding, the Department may adopt rules that limit the categories of direct services for young children and their families for which funds are made available during the initial year.

(5) Report (i) quarterly to the Joint Legislative Commission on Governmental Operations and (ii) to the General Assembly and the Governor by April 1, 1994, and by March 1, 1995, on the ongoing results of all the local demonstration projects' work, including all details of the use to which the allocations were put, and on the continuing plans of the North Carolina Partnership and of the Department, together with legislative proposals, including proposals to implement the program statewide.

(b) The Secretary shall approve, upon recommendation of the North Carolina Partnership, all allocations of State funds to local demonstration projects. The Secretary also shall approve all local plans. (1993 (Reg. Sess., 1994), c. 766, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 766, s. 2, made this section effective upon ratification. The act was ratified July 16, 1994.

§ 143B-168.14. Local partnerships; conditions.

(a) In order to receive State funds, the following conditions shall be met:

(1) Each local demonstration project shall be coordinated by a new local partnership responsible for developing a comprehensive, collaborative, long-range plan of services to children and families in the service-delivery area. The board of directors of each local partnership shall consist of members including representatives of public and private nonprofit health and human service agencies, day care providers, the business community, foundations, county and municipal governments, local education units, and families. The Department, in cooperation with the North Carolina Partnership, may specify in its requests for applications the local agencies that shall be represented on a local board of directors. No existing local, private, nonprofit 501(c)(3) organization, other than one established on or after July 1, 1993, and that meets the guidelines for local partnerships as established under this Part, shall be eligible to apply to serve as the local partnership for the purpose of this Part.

(2) Each local partnership shall agree to adopt procedures for its operations that are comparable to those of Article 33C of Chapter 143 of the General Statutes, the Open Meetings Law, and Chapter 132 of the General Statutes, the Public Records Law, and provide for enforcement by the Department.

(3) Each local partnership shall adopt procedures to ensure that all personnel who provide services to young children and their families under this Part know and understand their responsibility to report suspected child abuse, neglect, or dependency, as defined in G.S. 7A-517.

(b) Each local partnership shall be subject to audit and review by the State Auditor under Article 5A of Chapter 147 of the General Statutes. The State Auditor shall conduct annual financial and compliance audits of the local partnerships. (1993 (Reg. Sess., 1994), c. 766, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 766, s. 2, made this section effective upon ratification. The act was ratified July 16, 1994.

§ 143B-168.15. Use of State funds.

(a) State funds allocated to local projects for services to children and families shall be used to meet assessed needs, expand coverage, and improve the quality of these services. The local plan shall address the assessed needs of all children to the extent feasible. It is the intent of the General Assembly that the needs of both young children below poverty who remain in the home, as well as the needs of young children below poverty who require services beyond those offered in child care settings, be addressed. Therefore, as local partnerships address the assessed needs of all children, they should devote an appropriate amount of their State allocations, considering these needs and other available resources, to meet the needs of children below poverty and their families.

(b) Depending on local, regional, or Statewide needs, funds may be used to support activities and services that shall be made available and accessible to providers, children, and families on a voluntary basis. Of the funds allocated to local partnerships that are designated by the Secretary for direct services, seventy-five percent (75%) shall be used for any one or more of the following activities and services:

(1) Child day care services, including:
  a. Child day care subsidies to reduce waiting lists;
  b. Raising the county child day care subsidy rate to the State market rate, if applicable, in return for improvements in the quality of child day care services;
  c. Raising the income eligibility for child day care subsidies to seventy-five percent (75%) of the State median family income;
  d. Start-up funding for child day care providers;
  e. Assistance to enable child day care providers to conform to licensing and building code requirements;
  f. Child day care resources and referral services;
  g. Enhancement of the quality of child day care provided;
  h. Technical assistance for child day care providers;
  i. Quality grants for child day care centers or family child day care homes;
  j. Expanded services or enhanced rates for children with special needs;
  k. Head Start services;
  l. Development of comprehensive child day care services that include child health and family support;
  m. Activities to reduce staff turnover;
  n. Activities to serve children with special needs;
  o. Transportation services related to providing child day care services;
  p. Evaluation of plan implementation of child day care services; and
  q. Needs and resources assessments for child day care services.

(2) Family- and child-centered services, including early childhood education and child development services, including:
  a. Enhancement of the quality of family- and child-centered services provided;
  b. Technical assistance for family- and child-centered services;
  c. Needs and resource assessments for family- and child-centered services;
  d. Home-centered services; and
  e. Evaluation of plan implementation of family- and child-centered services.

(3) Other appropriate activities and services for child day care providers and for family- and child-centered services, including:

a. Staff and organizational development, leadership and administrative development, technology assisted education, and long-range planning; and

b. Procedures to ensure that infants and young children receive needed health, immunization, and related services.

(c) Long-term plans for local projects that do not receive their full allocation in the first year, other than those selected in 1993, should consider how to meet the assessed needs of low-income children and families within their neighborhoods or communities. These plans also should reflect a process to meet these needs as additional allocations and other resources are received.

(d) State funds designated by the Secretary for start-up and related activities may be used for capital expenses or to support activities and services for children, families, and providers. State funds designated by the Secretary to support activities and services for children, families, and providers shall not be used for major capital expenses unless the Secretary approves this use of State funds based upon a finding that a local partnership has demonstrated that (i) this use is a clear priority need for the local plan, (ii) it is necessary to enable the local partnership to provide services and activities to underserved children and families, and (iii) the local partnership will not otherwise be able to meet this priority need by using State or federal funds available to that county.

(e) State funds allocated to local partnerships shall not supplant current expenditures by counties on behalf of young children and their families, and maintenance of current efforts on behalf of these children and families shall be sustained. State funds shall not be applied without the Secretary's approval where State or federal funding sources, such as Head Start, are available or could be made available to that county. (1993 (Reg. Sess., 1994), c. 766, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 766, s. 2, made this section effective upon ratification. The act was ratified July 16, 1994.

§ 143B-168.16. Home-centered services; consent.

No home-centered services including home visits or in-home parenting training shall be allowed under this Part unless the written, informed consent of the participating parents authorizing the home-centered services is first obtained by the local partnership, educational institution, local school administrative unit, private school, not-for-profit organization, governmental agency, or other entity that is conducting the parenting program. The participating parents may revoke at any time their consent for the home-centered services.

The consent form shall contain a clear description of the program including (i) the activities and information to be provided by the program during the home visits, (ii) the number of expected home visits, (iii) any responsibilities of the parents, (iv) the fact, if applicable, that a record will be made and maintained on the home visits, (v) the fact that the parents may revoke at any time the consent, and (vi) any other information as may be necessary to convey to the parents a clear understanding of the program.

Parents at all times shall have access to any record maintained on home-centered services provided to their family and may place in that record a written response to any information with which they disagree that is in the record. (1993 (Reg. Sess., 1994), c. 766, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 766, s. 2, made this section effective upon ratification. The act was ratified July 16, 1994.

Part 14D. Long-Term Care Ombudsman Program.

§ 143B-181.20. (See editor's note for date change) State/Regional Long-Term Care Ombudsman; authority to enter; cooperation of government agencies; communication with residents.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143B-181.25. (Effective October 1, 1994 — See editor's note) Office of State/Regional Long-Term Care Ombudsman; penalty for willful interference.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 4.

Department of Revenue.

Part 1. General Provisions.

§ 143B-218.1. Report to Joint Legislative Commission on Governmental Operations.

The Department of Revenue shall report annually to the Joint Legislative Commission on Governmental Operations on the quality of services provided to taxpayers, including telephone and walk-in assistance and taxpayer education. (1993, c. 532, s. 13.)

Editor's Note. — Session Laws 1993, c. 532, s. 13 was codified as this section at the direction of the Revisor of Statutes. It was inadvertently omitted from the 1993 Cumulative Supplement.

ARTICLE 6.

Department of Correction.

Part 1. General Provisions.

§ 143B-261. Department of Correction — duties.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 20.10 provides the Departments of Transportation and Correction shall report, quarterly beginning October 1, 1994, to the Joint Legislative Transportation Oversight Committee on the implementation of the recommendations of the Inmate Labor Subcommittee.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as "The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

§ 143B-264. (Effective October 1, 1994 — See editor's note) Department of Correction — organization.

Editor's Note. — Session Laws 1993, c. 538, which amended this section, in s. 56, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(b), provides: "This act becomes effective October 1, 1994, and applies only to offenses occurring on or after that date. Prosecutions for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Part 3. Parole Commission.

§ 143B-266. (Effective October 1, 1994 — See editor's note) Post-Release Supervision and Parole Commission — creation, powers and duties.

(a) There is hereby created a Post-Release Supervision and Parole Commission of the Department of Correction with the authority to grant paroles, including both regular and temporary paroles, to persons held by virtue of any final order or judgment of any court of this State as provided in Chapter 148 of the General Statutes and laws of the State of North Carolina, except that persons sentenced under Article 81B of Chapter 15A of the General Statutes are not eligible for parole. The Commission shall also have authority to revoke, terminate, and suspend paroles of such persons (including persons placed on parole on or before the effective date of the Executive Organization Act of 1973) and to assist the Governor in exercising his authority in granting reprieves, commutations, and pardons, and shall perform such other services as may be required by the Governor in exercising his powers of executive clemency. The Commission shall also have authority to revoke and terminate persons on post-release supervision, as provided in Article 84A of Chapter 15A of the General Statutes.

(b) All releasing authority previously resting in the Commissioner and Commission of Correction with the exception of authority for extension of the limits of the place of confinement of a prisoner contained in G.S. 148-4 is hereby transferred to the Post-Release Supervision and Parole Commission. Specifically, such releasing authority includes work release (G.S. 148-33.1), indeterminate-sentence release (G.S. 148-42), and release of youthful offenders (G.S. 148-49.8), provided the individual considered for work release or indeterminate-sentence release shall have been recommended for release by the Secretary of Correction or his designee.

(c) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, in accordance with which prisoners eligible for parole consideration may have their cases reviewed and investigated and by which such proceedings may be initiated and considered. All rules and regulations heretofore adopted by the Board of Paroles shall remain in full force and effect unless and until repealed or superseded by action of the Post-Release Supervision and Parole Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Correction.

(d) The Commission is authorized and empowered to impose as a condition of parole or post-release supervision that restitution or reparation be made by the prisoner in accordance with the provisions of G.S. 148-57.1. The Commission is further authorized and empowered to make restitution or reparation a condition of work release in accordance with the provisions of G.S. 148-33.2. (1973, c. 1262, s. 8; 1975, c. 220; 1977, c. 614, s. 5; c. 732, s. 5; 1993, c. 538, s. 42; 1994, Ex. Sess., c. 21, s. 6; c. 24, s. 14(b).)

Editor's Note. —

Session Laws 1993, c. 538, which amended this section, in s. 56, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(b), provides: "This act becomes effective October 1, 1994, and applies only to offenses occurring on or after that date. Prosecutions for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1994, Extra Session, c. 21, which amended this section, in s. 6 provides: "This act becomes effective on the same date that Chapter 538 of the 1993 Session Laws becomes effective [October 1, 1994], and applies to offenses occurring on or after that date. Prosecution for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal, expiration, or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. —

The 1994 Extra Session amendment by c. 21, s. 6, effective on the same date that Chapter 538 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date, in the first sentence of (a) deleted "for" preceding "persons sentenced under" and substituted "are not" for "only those sentenced to life imprisonment are" preceding "eligible for parole."

§ 143B-267. (Effective October 1, 1994 — See editor's note) Post-Release Supervision and Parole Commission — members; selection; removal; chairman; compensation; quorum; services.

The Post-Release Supervision and Parole Commission shall consist of five full-time members. The five full-time members shall be appointed by the Governor from persons whose recognized ability, training, experience, and character qualify them for service on the Commission. The terms of office of the five members presently serving on the Commission shall expire on June 30, 1993. The terms of three members appointed effective July 1, 1993, shall be for three years. The terms of two members appointed effective July 1, 1993, shall be for four years. Thereafter, the terms of office of persons appointed by the Governor as members of the Commission shall be for four years or until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, removal, death or disability of a full-time member shall be for the balance of the unexpired term only.

The Governor shall have the authority to remove any member of the Commission from office for misfeasance, malfeasance or nonfeasance, pursuant to the provisions of G.S. 143B-13. The Governor shall designate a full-time member of the Commission to serve as chairman of the Commission at the pleasure of the Governor.

With regard to the transaction of the business of the Commission the following procedure shall be followed: The chairman shall designate panels of two voting Commission members and shall designate a third commissioner to serve as an alternate member of a panel. Insofar as practicable, the chairman shall assign the members to panels in such fashion that each commissioner sits a substantially equal number of times with each other commissioner. Whenever any matter of business, such as the granting, denying, revoking or rescinding of parole, or the authorization of work-release privileges to a prisoner, shall come before the Commission for consideration and action, the chairman shall refer such matter to a panel. Action may be taken by concurring vote of the two sitting panel members. If there is not a concurring vote of the two panel members, the matter will be referred to the alternate member who shall cast the deciding vote. However, no person serving a sentence of life imprisonment shall be granted parole or work-release privileges except by majority vote of the full Commission.

The full-time members of the Commission shall receive the salary fixed by the General Assembly in the Current Operations Appropriations Act and shall receive necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-6.

All clerical and other services required by the Commission shall be supplied by the Secretary of Correction. (1973, c. 1262, s. 9; 1977, c. 704, s. 1; 1979, c. 2; 1983, c. 709, s. 3; c. 717, s. 80; 1983 (Reg.

Sess., 1984), c. 1034, s. 164; 1993, c. 337, s. 1; c. 538, s. 43; 1994, Ex. Sess., c. 14, s. 63; c. 24, s. 14(b).)

Editor's Note. — Session Laws 1993, c. 538, which amended this section, in s. 56, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(b), provides: "This act becomes effective October 1, 1994, and applies only to offenses occurring on or after that date. Prosecutions for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1994, Extra Session, c. 14, s. 73 provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1994 Extra Session amendment by c. 14, s. 63, effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date, substituted "Commission" for "commission" at its second and fourth occurrences in the third paragraph.

ARTICLE 6A.

North Carolina State-County Criminal Justice Partnership Act.

§ 143B-273. Short title.

Editor's Note. —

Session Laws 1993, c. 534, s. 2, which enacted this Article, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(d), provides: "Grants administered under this act shall become effective April 1, 1995. The Department of Correction may use funds available to support the administration of the State-County Criminal Justice Partnership program effective January 1, 1994."

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

§ 143B-273.5. State-County Criminal Justice Partnership Account established.

Editor's Note. — Session Laws 1993, c. 534, s. 2, which enacted this Article, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(d), provides: "Grants administered under this act shall become effective April 1, 1995. The Department of Correction may use funds available to support the administration of the State-County Criminal Justice Partnership program effective January 1, 1994."

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

§ 143B-273.8. Duties of Department of Correction.

Editor's Note. — Session Laws 1993, c. 534, s. 2, which enacted this Article, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(d), provides: "Grants administered under this act shall become effective April 1, 1995. The Department of Correction may use funds available to support the administration of the State-County Criminal Justice Partnership program effective January 1, 1994."

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

§ 143B-273.13. Application for implementation funding.

Editor's Note. — Session Laws 1993, c. 534, s. 2, which enacted this Article, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(d), provides: "Grants administered under this act shall become effective April 1, 1995. The Department of Correction may use funds available to support the administration of the State-County Criminal Justice Partnership program effective January 1, 1994."

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

§ 143B-273.14. Fundable programs; community-based corrections programs.

Editor's Note. — Session Laws 1993, c. 534, s. 2, which enacted this Article, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(d), provides: "Grants administered under this act shall become effective April 1, 1995. The Department of Correction may use funds available to support the administration of the State-County Criminal Justice Partnership program effective January 1, 1994."

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

§ 143B-273.15. Funding formula.

Editor's Note. — Session Laws 1993, c. 534, s. 2, which enacted this Article, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(d), provides: "Grants administered under this act shall become effective April 1, 1995. The Department of Correction may use funds available to support the administration of the State-County Criminal Justice Partnership program effective January 1, 1994."

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

ARTICLE 7.

Department of Environment, Health, and Natural Resources.

Part 4. Environmental Management Commission.

§ 143B-282.1. Environmental Management Commission — quasi-judicial powers; procedures.

(a) With respect to those matters within its jurisdiction, the Environmental Management Commission shall exercise quasi-judicial powers in accordance with the provisions of Chapter 150B of the General Statutes. This section and any rules adopted by the Environmental Management Commission shall govern such proceedings:

(1) Exceptions to recommended decisions in contested cases shall be filed with the Secretary within 30 days of the receipt by the Secretary of the official record from the Office of Administrative Hearings, unless additional time is allowed by the chairman of the Commission.
(2) Oral arguments by the parties may be allowed by the chairman of the Commission upon request of the parties.
(3) Deliberations of the Commission shall be conducted in its public meeting unless the Commission determines that consultation with its counsel should be held in a closed session pursuant to G.S. 143-318.11.

(b) The final agency decision in contested cases that arise from civil penalty assessments shall be made by the Commission. In the evaluation of each violation, the Commission shall recognize that harm to the Natural resources of the State arising from the violation of standards or limitations established to protect those resources may be immediately observed through damaged resources or may be incremental or cumulative with no damage that can be immediately observed or documented. Penalties up to the maximum authorized may be based on any one or combination of the following factors:

(1) The degree and extent of harm to the natural resources of the State, to the public health, or to private property resulting from the violation;
(2) The duration and gravity of the violation;
(3) The effect on ground or surface water quantity or quality or on air quality;
(4) The cost of rectifying the damage;
(5) The amount of money saved by noncompliance;
(6) Whether the violation was committed willfully or intentionally;
(7) The prior record of the violator in complying or failing to comply with programs over which the Environmental Management Commission has regulatory authority; and
(8) The cost to the State of the enforcement procedures.

(c) The chairman shall appoint a Committee on Civil Penalty Remissions from the members of the Commission. No member of the Committee on Civil Penalty Remissions may hear or vote on any matter in which he has an economic interest. The Committee on Civil Penalty Remissions shall make the final agency decision on remission requests. In determining whether a remission request will be approved, the Committee shall consider the recommendation of the Secretary and the following factors:

(1) Whether one or more of the civil penalty assessment factors in subsection (b) of this section were wrongly applied to the detriment of the petitioner;
(2) Whether the violator promptly abated continuing environmental damage resulting from the violation;
(3) Whether the violation was inadvertent or a result of an accident;
(4) Whether the violator had been assessed civil penalties for any previous violations;
(5) Whether payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

(d) The Committee on Civil Penalty Remissions may remit the entire amount of the penalty only when the violator has not been assessed civil penalties for previous violations, and when payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

(e) If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary of Environment, Health, and Natural Resources shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment.

(f) As used in this section, "Secretary" means the Secretary of Environment, Health, and Natural Resources. The Secretary may delegate his powers and duties under this section to the Director of the Division of Environmental Management of the Department of Environment, Health, and Natural Resources. (1989 (Reg. Sess., 1990), c. 1036, s. 2; 1993 (Reg. Sess., 1994), c. 570, s. 5.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, and which shall not affect pending litigation, in subdivision (a)(3) substituted "a closed session" for "an executive session."

Part 29. Advisory Commission for North Carolina State Museum of Natural Sciences.

§ 143B-344.18. Commission created; membership.

Editor's Note. —
Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

ARTICLE 8.

Department of Transportation.

Part 1. General Provisions.

§ 143B-346. Department of Transportation — purpose and functions.

CASE NOTES

Duty to Use Due Care. — The law does not impose a duty on the individual employees of the Department of Transportation that extends to the general public, beyond the duty to use due care in the performance of the specific tasks they undertake. The duty owing to the public to maintain highways falls upon the Department of Transportation (DOT). Reid v. Roberts, 112 N.C. App. 222, 435 S.E.2d 116, cert. denied, 335 N.C. 559, 439 S.E.2d 151 (1993).

ARTICLE 9.

Department of Administration.

Part 1. General Provisions.

§ 143B-367. Duties of the Department.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 11.6 provides in part that the North Carolina Day Care Facility Task Force is created within the Department of Administration, which shall develop a day care facility upon the advice and recommendation of the Day Care Facility Task Force.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as "The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

Part 18. North Carolina Internship Council.

§ 143B-417. North Carolina Internship Council — creation; powers and duties.

There is hereby created the North Carolina Internship Council of the Department of Administration. The North Carolina Internship Council shall have the following functions and duties:

(1) To determine the number of student interns to be allocated to each of the following offices or departments:
  a. Office of the Governor
  b. Department of Administration
  c. Department of Correction

d. Department of Cultural Resources
e. Department of Revenue
f. Department of Transportation
g. Department of Environment, Health, and Natural Resources
h. Department of Commerce
i. Department of Crime Control and Public Safety
j. Department of Human Resources
k. Office of the Lieutenant Governor
l. Office of the Secretary of State
m. Office of the State Auditor
n. Office of the State Treasurer
o. Department of Public Instruction
p. Repealed by Session Laws 1985, c. 757, s. 162, effective July 1, 1985
q. Department of Agriculture
r. Department of Labor
s. Department of Insurance
t. Office of the Speaker of the House of Representatives
u. Justices of the Supreme Court and Judges of the Court of Appeals
v. Department of Community Colleges
w. Office of State Personnel
x. Office of the Senate President Pro Tempore;

(2) To screen applications for student internships and select from these applications the recipients of student internships; and

(3) To determine the appropriateness of proposals for projects for student interns submitted by the offices and departments enumerated in (1). (1977, c. 771, s. 4; c. 967; 1979, c. 783; 1983, c. 710; 1985, c. 757, s. 162; 1989, c. 727, s. 218(151), c. 751, s. 7(21); 1989 (Reg. Sess., 1990), c. 900, s. 1; 1991 (Reg. Sess., 1992), c. 959, s. 42; 1993, c. 522, s. 17.)

Editor's Note. — This section is set out to correct an omission and a misprint in the main pamphlet.

Part 28. Office of the State Controller.

§ 143B-426.39. Powers and duties of the State Controller.

The State Controller shall:

(1) Prescribe, develop, operate, and maintain in accordance with generally accepted principles of governmental accounting, a uniform state accounting system for all state agencies. The system shall be designed to assure compliance with all legal and constitutional requirements including those associated with the receipt and expenditure of, and the accountability for public funds.

(2) On the recommendation of the State Auditor, prescribe and supervise the installation of any changes in the accounting systems of an agency that, in the judgment of the State Controller, are necessary to secure and maintain internal

control and facilitate the recording of accounting data for the purpose of preparing reliable and meaningful statements and reports. The State Controller shall be responsible for seeing that a new system is designed to accumulate information required for the preparation of budget reports and other financial reports.

(3) Maintain complete, accurate and current financial records that set out all revenues, charges against funds, fund and appropriation balances, interfund transfers, outstanding vouchers, and encumbrances for all State funds and other public funds including trust funds and institutional funds available to, encumbered, or expended by each State agency, in a manner consistent with the uniform State accounting system.

(4) Prescribe the uniform classifications of accounts to be used by all State agencies including receipts, expenditures, assets, liabilities, fund types, organization codes, and purposes. The State Controller shall also, after consultation with the Office of State Budget and Management, prescribe a form for the periodic reporting of financial accounts, transactions, and other matters that is compatible with systems and reports required by the State Controller under this section. Additional records, accounts, and accounting systems may be maintained by agencies when required for reporting to funding sources provided prior approval is obtained from the State Controller.

(5) Prescribe the manner in which disbursements of the State agencies shall be made, in accordance with G.S. 143-3.

(6) Operate a central payroll system, in accordance with G.S. 143-3.2 and 143-34.1.

(7) Keep a record of the appropriations, allotments, expenditures, and revenues of each State agency, in accordance with G.S. 143-20.

(8) Make appropriate reconciliations with the balances and accounts kept by the State Treasurer.

(9) Develop, implement, and amend as necessary a uniform statewide cash management plan for all State agencies in accordance with G.S. 147-86.11.

(9a) Implement a statewide accounts receivable program in accordance with Article 6B of Chapter 147 of the General Statutes.

(10) Prepare and submit to the Governor, the State Auditor, the State Treasurer, and the Office of State Budget and Management each month, a report summarizing by State agency and appropriation or other fund source, the results of financial transactions. This report shall be in the form that will most clearly and accurately set out the current fiscal condition of the State. The State Controller shall also furnish each State agency a report of its transactions by appropriation or other fund source in a form that will clearly and accurately present the fiscal activities and condition of the appropriation or fund source.

(11) Prepare and submit to the Governor, the State Auditor, the State Treasurer, and the Office of State Budget and Management, at the end of each quarter, a report on the financial condition and results of operations of the State

entity for the period ended. This report shall clearly and accurately present the condition of all State funds and appropriation balances and shall include comments, recommendations, and concerns regarding the fiscal affairs and condition of the State.

(12) Prepare on or before October 31 of each year, a Comprehensive Annual Financial Report of the preceding fiscal year, in accordance with G.S. 143-20.1.

(13) Perform additional functions and duties assigned to the State Controller, within the scope and context of the Executive Budget Act, Chapter 143, Article 1 of the General Statutes.

(14) With respect to State agencies, exercise general coordinating authority for all telecommunications matters relating to the internal management and operations of these agencies. In discharging that responsibility the State Controller may in cooperation with affected State agency heads, do such of the following things as he deems necessary and advisable:

a. Provide for the establishment, management, and operation, through either State ownership or commercial leasing, of the following systems and services as they affect the internal management and operation of State agencies:
   1. Central telephone systems and telephone networks;
   2. Teleprocessing systems;
   3. Teletype and facsimile services;
   4. Satellite services;
   5. Closed-circuit TV systems;
   6. Two-way radio systems;
   7. Microwave systems;
   8. Related systems based on telecommunication technologies.

b. With the approval of the Information Technology Council, coordinate the development of cost-sharing systems for respective user agencies for their proportionate parts of the cost of maintenance and operation of the systems and services listed in item "a." of this subdivision.

c. Assist in the development of coordinated telecommunications services or systems within and among all State agencies and recommend, where appropriate, cooperative utilization of telecommunication facilities by aggregating users.

d. Perform traffic analysis and engineering for all telecommunications services and systems listed in item "a." of this subdivision.

e. Pursuant to G.S. 143-49, establish telecommunications specifications and designs so as to promote and support compatibility of the systems within State agencies.

f. Pursuant to G.S. 143-49 and G.S. 143-50, coordinate the review of requests by State agencies for the procurement of telecommunications systems or services.

g. Pursuant to G.S. 143-341 and Chapter 146 of the General Statutes, coordinate the review of requests by

State agencies for State government property acquisition, disposition, or construction for telecommunications systems requirements.

h. Provide a periodic inventory of telecommunications costs, facilities, systems, and personnel within State agencies.

i. Promote, coordinate, and assist in the design and engineering of emergency telecommunications systems, including but not limited to the 911 emergency telephone number program, Emergency Medical Services, and other emergency telecommunications services.

j. Perform frequency coordination and management for State agencies and local governments, including all public safety radio service frequencies, in accordance with the rules and regulations of the Federal Communications Commission or any successor federal agency.

k. Advise all State agencies on telecommunications management planning and related matters and provide through the State Personnel Training Center or the State Information Processing Services training to users within State agencies in telecommunications technology and systems.

l. Assist and coordinate the development of policies and long-range plans, consistent with the protection of citizens' rights to privacy and access to information, for the acquisition and use of telecommunications systems; and base such policies and plans on current information about State telecommunications activities in relation to the full range of emerging technologies.

m. Work cooperatively with the North Carolina Agency for Public Telecommunications in furthering the purpose of this subdivision.

The provisions of this subdivision shall not apply to the Criminal Information Division of the Department of Justice or to the Judicial Information System in the Judicial Department.

(15) Provide cities, counties, and other local governmental units with access to a central telecommunications system or service established under subdivision (14) of this section for State agencies. Access shall be provided on the same cost basis that applies to State agencies.

(16) Establish switched broadband telecommunications services and permit in addition to State agencies, cities, counties, and other local government units, the following organizations and entities to share on a not-for-profit basis:

a. Nonprofit educational institutions;

b. The Microelectronics Center of North Carolina ("MCNC");

c. Research affiliates of MCNC for use only in connection with research activities sponsored or funded, in whole or in part, by MCNC, if such research activities relate to health care or education in North Carolina;

d. Agencies of the United States government operating in North Carolina for use only in connection with activities that relate to health care or education in North Carolina; or

e. Hospitals, clinics, and other health care facilities for use only in connection with activities that relate to health care or education in North Carolina.

Provided, however, that sharing of the switched broadband telecommunications services by State agencies with entities or organizations in the categories set forth herein shall not cause the State, the Office of State Controller, or the MCNC to be classified as a public utility as that term is defined in G.S. 62-3(23)a.6. Nor shall the State, the Office of State Controller, or the MCNC engage in any activities that may cause those entities to be classified as a common carrier as that term is defined in the federal Communications Act of 1934, 47 U.S.C. § 153(h). Provided further, authority to share the switched broadband telecommunications services with the non-State agencies set forth above in subdivision (16)a. through subdivision (16)e. shall terminate one year from the effective date of a tariff that makes the broadband services available to any customer. (1985 (Reg. Sess., 1986), c. 1024, s. 1; 1987, c. 738, s. 59(a)(2); 1989, c. 239, s. 4; 1989 (Reg. Sess., 1990), c. 1024, s. 37; 1991, c. 542, s. 14; 1993, c. 512, s. 2; 1993 (Reg. Sess., 1994), c. 777, s. 1(a).)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 17, 1994, added subdivision (16).

§ 143B-426.39A. Information Highway Grants Advisory Council.

(a) The Information Highway Grants Advisory Council is created within the Office of the State Controller. The Council shall consist of 18 members as follows:

(1) Five members to be appointed by the Governor.
(2) Four members to be appointed by the Speaker of the House of Representatives, at least one of whom shall be a public member.
(3) Four members to be appointed by the President Pro Tempore of the Senate, at least one of whom shall be a public member.
(4) One representative from the Department of Public Instruction to be designated by the Superintendent of Public Instruction.
(5) One representative from the Department of Community Colleges to be designated by the President of the Community College System.
(6) One representative from the The University of North Carolina to be designated by the President of The University of North Carolina.
(7) One representative from the Office of the State Controller, to be designated by the State Controller.
(8) One representative from the North Carolina School of Science and Mathematics, to designated by the Board of Trustees.

Members of the Council shall be appointed by September 1, 1994, and shall serve two-year terms. The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each designate a cochair from among the member of the General Assembly they appoint to the Council. Vacancies on the Council shall be filled in the same manner as the original appointment.

The members of the Council shall not receive compensation but may receive subsistence and travel in accordance with G.S. 120-3.1, G.S. 138-5, and G.S. 138-6 as appropriate.

(b) The Information Highway Grants Advisory Council shall meet as often as needed to transact its business. The first meeting of the Council shall be called by the cochairs. A majority of the members of the Council shall constitute a quorum. The Office of the State Controller shall provide staff and space to the Council.

(c) The Information Highway Grants Advisory Council shall advise the Governor, the General Assembly, and Office of the State Controller on matters pertaining to the North Carolina Information Highway. The Information Highway Grants Advisory Council shall, by September 30, 1994, develop criteria for evaluating grant applications under this section. The Information Highway Grants Advisory Council shall evaluate the grant applications and make recommendations to the State Controller regarding grant recipients by December 1, 1994. The State Controller shall not award grants before December 15, 1994. The State Controller shall notify the information Highway Grants Advisory Council as to whom the intended grant recipients are fifteen days prior to awarding the grants. (1993 (Reg. Sess., 1994), c. 769, s. 10.1(c)-(e).)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 10.1 (c) to (e) have been codified as this section at the direction of the Revisor of Statutes.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 10.1 (a) and (b) provide: "(a) The General Assembly encourages the concept of a switched broadband information highway run by private sector industry, where the State could be a customer, that would (i) enhance the delivery of education, health care, and other services to all of the people of North Carolina and (ii) promote economic development throughout all the counties of North Carolina.

"(b) Seven million dollars ($7,000,000) in nonrecurring funds are appropriated in this act to the Office of the State Controller for the North Carolina Information Highway. These funds shall be used to provide one-time grants not to exceed one hundred thousand dollars ($100,000) per site to qualified State or local governmental entities who establish Information Highway sites. To qualify for a grant, a State or local governmental entity must: (i) file an application with the Office of State Controller by November 1, 1994, (ii) present a plan for the use of the grant funds and for the use of the Information Highway site, and (iii) demonstrate its willingness and ability to pay all of the expenses associated with the use and operations of the site. The State Controller shall administer the grants program established by this section after consulting with and receiving the recommendations of the Information Highway Grants Advisory Council."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 10.1 (f) to (i) provide: "(f) The Information Highway Grants Advisory Council and the State Controller shall report to the 1995 General Assembly regarding the grants program for the North Carolina Information Highway. Upon request, the Information Highway Grants Advisory Council and State Controller shall report to the Joint Legislative Education Oversight Committee and to any other legislative oversight committees.

"(g) Those State and local entities that have expended monies prior to June 1, 1994, on Information Highway equipment shall receive preferential consideration in expenditures pursuant to this section.

"(h) It is the intent of the General Assembly that those programs receiving grants for the North Carolina Information Highway be reviewed after a three year period to determine the benefits of the programs. No one shall obligate the

State to pay any nonrecurring or recurring costs related to the North Carolina Information Highway except to the extent that funds are appropriated by the General Assembly specifically for that purpose. No one shall obligate the State to pay any recurring costs related to the North Carolina Information Highway beyond the end of the fiscal period for which funds are appropriated for that purpose.

"In no event shall anyone obligate the State to pay recurring operating expenses related to the North Carolina Information Highway for any non-State entity.

"(i) Notwithstanding any other law, funds in the amount of four million one hundred thousand dollars ($4,100,000) appropriated to the Office of the State Controller in Chapter 561 of the 1993 Session Laws for the 1993-94 fiscal year for the State Telecommunications System shall revert to the General Fund."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

As enacted, subdivision (a)(6) contains the phrase "the The."

ARTICLE 10.

Department of Commerce.

Part 1. General Provisions.

§ 143B-429. Department of Commerce — duties.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 28.21 creates the Piedmont Sports and Entertainment Study Commission, to study the need for and feasibility of creating regional sports and entertainment facilities to serve the Piedmont area of the State, and to submit a report to the 1995 General Assembly.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769 s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Part 2. Economic Development.

§ 143B-434. Economic Development Board — creation, duties, membership.

(a) Creation and Duties. — There is created within the Department of Commerce an Economic Development Board. The Board shall have the following duties:

(1) To provide economic and community development planning for the State.

(2) To recommend economic development policy to the Secretary of Commerce, the General Assembly, and the Gover-

nor. The recommendations may cover the following issues as well as any other economic development policy issues:

a. Use of tax abatements and other incentives to motivate economic development.

b. Definition of which specific activities and programs should be considered economic development activities and programs for the purpose of receiving State appropriations.

c. The role of institutions of higher education in economic development.

d. The use of State funds to leverage private nonprofit economic development initiatives.

e. The linkage of workforce preparedness activities and initiatives, and economic development planning.

(3) To recommend annually to the Governor biennial and annual appropriations for economic development programs.

(4) To develop and update annually a comprehensive strategic economic development plan, as provided in G.S. 143B-434.1.

The Board shall meet at least quarterly at the call of its chair or the Secretary. Each quarter the Secretary shall report to the Board on the program and progress of this State's economic development.

(b) Membership. — The Economic Development Board shall consist of 36 members. The Secretary of Commerce shall serve ex officio as a member and as the secretary of the Economic Development Board. Four members of the House of Representatives appointed by the Speaker of the House of Representatives, four members of the Senate appointed by the President Pro Tempore of the Senate, the President of The University of North Carolina, or designee, the President of the North Carolina Community College System, or designee, the Secretary of State, and the President of the Senate (or the designee of the President of the Senate), shall serve as members of the Board. The Governor shall appoint the remaining 23 members of the Board, provided that effective with the terms beginning July 1, 1997, one of those appointees shall be a representative of a nonprofit organization involved in economic development and two of those appointees shall be county economic development representatives. The Governor shall designate a chair and a vice-chair from among the members of the Board. Appointments to the Board made by the Governor for terms beginning July 1, 1997, and appointments to the Board made by the Speaker of the House of Representatives and the President Pro Tempore of the Senate for terms beginning July 9, 1993, should reflect the ethnic and gender diversity of the State as nearly as practical.

The initial appointments to the Board shall be for terms beginning on July 9, 1993. Of the initial appointments made by the Governor, the terms shall expire July 1, 1997. Of the initial appointments made by the Speaker of the House of Representatives and by the President Pro Tempore of the Senate two appointments of each shall be designated to expire on July 1, 1995; the remaining terms shall expire July 1, 1997. Thereafter, all appointments shall be for a term of four years.

The appointing officer shall make a replacement appointment to serve for the unexpired term in the case of a vacancy.

The members of the Economic Development Board shall receive per diem and necessary travel and subsistence expenses payable to members of State Boards and agencies generally pursuant to G.S. 138-5 and [G.S.] 138-6, as the case may be. The members of the Economic Development Board who are members of the General Assembly shall not receive per diem but shall receive necessary travel and subsistence expenses at rates prescribed by G.S. 120-3.1.

(c) Advice and Staff. — The Secretaries of Administration, State, and Transportation, the Commissioners of Agriculture and Labor, and the State Treasurer, or their designees, shall advise the Board on economic development activities within the responsibility of their respective departments. Clerical and professional staff support to the Economic Development Board shall be provided by an Interagency Economic Development Group composed of representatives of the following State agencies:

(1) The Department of Administration.
(2) The Department of Agriculture.
(3) The Employment Security Commission.
(4) The Department of Labor.
(5) The Department of Transportation.

The Department of Commerce shall have the responsibility for coordinating the activities and efforts of the Interagency Economic Development Group. (1977, c. 198, s. 1; 1981, c. 47, s. 6; 1981 (Reg. Sess., 1982), c. 1191, s. 18; 1983, c. 717, s. 83; 1989, c. 751, ss. 7(29), 9(c); 1991 (Reg. Sess., 1992), c. 959, s. 85; c. 1038, s. 22; 1993, c. 321, s. 313(a); c. 561, s. 12; 1993 (Reg. Sess., 1994), c. 773, s. 15.1.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 16, 1994, in the first paragraph of subsection (b), in the third sentence, substituted "President of the Senate (or the designee of the President of the Senate)" for "Lieutenant Governor."

§ 143B-437A. Industrial Development Fund.

Editor's Note. — Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 28.1(b) amends Session Laws 1993, c. 561, s. 104.1(a), noted in the main pamphlet, to refer to the 1994-95 fiscal year instead of the 1993-94 fiscal year.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 28.1(c) provides: "Subsections (a1) and (a2) of Section 104.1 of Chapter 561 of the 1993 Session laws apply to this section [s. 28.1]."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Part 8. Energy Division.

§ 143B-450.1. (See editor's note for date change) Authority to collect data; administration and enforcement; confidentiality.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 10. North Carolina State Ports Authority.

§ 143B-461. (See editor's note for date change) Jurisdiction of the Authority; application of Chapter 20; appointment and authority of special police.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 13. Mutual Burial Associations.

§ 143B-472.3. (See editor's note for date change) Requirements as to rules and bylaws.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143B-472.6. (Effective October 1, 1994 — See editor's note) Unlawful to operate without written authority of Commission.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143B-472.10. (Effective October 1, 1994 — See editor's note) Penalty for failure to operate in substantial compliance with bylaws.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143B-472.11. (Effective October 1, 1994 — See editor's note) Penalty for wrongfully inducing person to change membership.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143B-472.12. (Effective October 1, 1994 — See editor's note) Penalty for making false and fraudulent entries.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143B-472.13. (Effective October 1, 1994 — See editor's note) Accepting applications without collecting fee and first assessment.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143B-472.15. (Effective October 1, 1994 — See editor's note) Free services; failure to make proper assessments, etc., made a misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 143B-472.19. (Effective October 1, 1994 — See editor's note) Making false or fraudulent statement a misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Article 11.

Department of Crime Control and Public Safety.

Part 1. General Provisions.

§ 143B-474. Department of Crime Control and Public Safety — duties.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 22.1, provides that of the funds appropriated to the Department of Crime Control and Public Safety for the 1994-95 fiscal year, two hundred thirty thousand seven hundred ninety dollars ($230,790) shall be allocated to implement a pilot program to provide assistance to communities in the development of community policing programs in high crime areas. The Secretary shall report to the General Assembly on this program by March 1, 1995.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for the ativities occurring during the 1993-95 biennium."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

§ 143B-475.1. Deferred prosecution, community service restitution, and volunteer program.

Editor's Note. — Session Laws 1994, Extra Session, c. 24, s. 38 provides for the Administrative Office of the Courts, in consultation with the North Carolina Conference of District Attorneys, to study the problem of underutilization of the deferred prosecution program established in this section and recommend methods for encouraging greater use of the program across the State, and to report to the 1995 General Assembly.

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1994, Extra Session, c. 24, s. 71 is a severability clause.

Part 5A. North Carolina Center for Missing Persons.

§ 143B-499.6. (Effective October 1, 1994 — See editor's note) Improper release of information; penalty.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

October 1, 1994

I, Michael F. Easley, Attorney General of North Carolina, do hereby certify that the foregoing 1994 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina.

MICHAEL F. EASLEY

Attorney General of North Carolina